THE GENERAL STATUTES OF NORTH CAROLINA

ANNOTATED

1996 CUMULATIVE SUPPLEMENT

Volume 22

North Carolina Constitution, United States Constitution and Tables

Prepared under the Supervision of

The Department of Justice
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BY

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Annotated through 470 S.E.2d 425. For complete scope of annotations, see scope of volume page.

Place Behind Supplement Tab in Binder Volume. This Supersedes Previous Supplement, Which May Be Retained for Reference Purposes.

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Preface

This Cumulative Supplement to Volume 22 contains amendments and supplementary annotations to the Constitution of North Carolina and the Constitution of the United States. It also contains a table of the general laws enacted by the General Assembly through the 1996 Second Extra Session.

Beginning with the opinions issued by the North Carolina Attorney General on July 1, 1969, any opinion which construes a specific statute is cited as an annotation to that statute. For a copy of an opinion or of its headnotes write the Attorney General, P. O. Box 629, Raleigh, N.C. 27602.

The members of the North Carolina Bar are requested to communicate any defects they may find in the General Statutes or in this Cumulative Supplement, and any suggestions they may have for improving the General Statutes, to the Department of Justice of the State of North Carolina, or to Michie, Law Publishers, Charlottesville, Virginia.

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User's Guide

In order to assist both the legal profession and the layperson in obtaining the maximum benefit from the North Carolina General Statutes, a User's Guide has been included in Volume 1. This guide contains comments and information on the many features found within the General Statutes intended to increase the usefulness of this set of laws to the user. See the main volume for the complete User's Guide.

Scope of Volume

Constitutions:

Amendments to the Constitution of North Carolina.
Amendments to the Constitution of the United States.

Annotations:

Sources of the annotations to the General Statutes appearing in this volume are:

North Carolina Reports through Volume 343, p. 303.
North Carolina Court of Appeals Reports through Volume 121, p. 513.
South Eastern Reporter 2nd Series through Volume 470, p. 425.
Federal Reporter 3rd Series through Volume 83, p. 1423.
Federal Supplement through Volume 924, p. 224.
Federal Rules Decisions through Volume 165, p. 700.
Bankruptcy Reports through Volume 195, p. 823.
Supreme Court Reporter through Volume 116, p. 1711.
North Carolina Law Review through Volume 74, p. 1319.
Wake Forest Law Review through Volume 30, p. 1008.
Campbell Law Review through Volume 18, p. 201.
Duke Law Journal through Volume 45, p. 1088.
North Carolina Central Law Journal through Volume 25, p. 100.
Opinions of the Attorney General.

The General Statutes of North Carolina 1996 Cumulative Supplement

VOLUME 21

Constitution of North Carolina

Article I.

Declaration of Rights.

Sec.
37. (Effective upon certification of approval) Rights of victims of crime.

Article II.

Legislative.

22. (Effective January 1, 1997, contingent upon approval) Action on bills.

Article III.

Executive.

5. (Effective January 1, 1997, contingent upon approval) Duties of Governor.
7. Other elective officers.

Article IV.

Judicial.

Sec.
18. District Attorney and prosecutorial districts.
19. Vacancies.

Article V.

Finance.

12. Higher education facilities.
13. Seaport and airport facilities.
14. [Not in effect.]

Article XI.

Punishments, Corrections, and Charities.

1. (Effective upon certification of approval) Punishments.

ARTICLE I

DECLARATION OF RIGHTS

That the great, general, and essential principles of liberty and free government may be recognized and established, and that the relations of this State to the Union and government of the United States and those of the people of this State to the rest of the American people may be defined and affirmed, we do declare that:

Section 1. The equality and rights of persons.

Legal Periodicals. — For essay, "Fundamental Principles' in North Carolina Constitutional History," see 69 N.C.L. Rev. 1357 (1991).

For article, "Rediscovering State Constitutions," see 70 N.C.L. Rev. 1741 (1992).

For article, "North Carolina Constitutional History," see 70 N.C.L. Rev. 1759 (1992).

For note, "The Cause of Action for Damages Under North Carolina's Constitution: Corum v. University of North Carolina," see 70 N.C.L. Rev. 1899 (1992).

For essay, "Liberty, the 'Law of the

Land,' and Abortion in North Carolina," see 71 N.C.L. Rev. 1839 (1993).

CASE NOTES

This section creates a right to conduct a lawful business or to earn a livelihood that is "fundamental" for purposes of state constitutional analysis. Treants Enters., Inc. v. Onslow County, 83 N.C. App. 345, 350 S.E.2d 365 (1986), aff'd, 320 N.C. 776, 360 S.E.2d 783 (1987).

But this section and N.C. Const., Art. I, § 19 permit the State, through the exercise of its police power, to regulate economic enterprises, provided the regulation is rationally related to a proper governmental purpose. This is the test used in determining the validity of state regulation of business under both N.C. Const., Art. I, § 1 and Art. I, § 19. Poor Richard's, Inc. v. Stone, 322 N.C. 61, 366 S.E.2d 697 (1988).

A business involved in the buying and selling of military property has features which distinguish it from other types of retail sales in a way which justifies its regulation. Poor Richard's, Inc. v. Stone, 322 N.C. 61, 366 S.E.2d 697 (1988).

Article 1, Chapter 127B, regulating businesses dealing in military goods, is constitutional under the due process and equal protection provisions of the State and federal Constitutions. Poor Richard's, Inc. v. Stone, 322 N.C. 61, 366 S.E.2d 697 (1988).

Terminable at Will Employee Had No Legitimate Claim of Entitlement Under Due Process Clause. — Where there was nothing in the record which suggested that plaintiff had a contract for a definite term, her contract of employment was terminable at the will of either party, irrespective of the quality of performance, and plaintiff had no property interest in employment and no legitimate claim of entitlement under the due process clause. Peele v. Provident Mut. Life Ins. Co., 90 N.C. App. 447, 368 S.E.2d 892, appeal dismissed, 323 N.C. 366, 373 S.E.2d 547 (1988).

The classification created by § 127B-1 is not so arbitrary or unreasonable as to be violative of the equal protection requirement. Poor Richard's, Inc. v. Stone, 322 N.C. 61, 366 S.E.2d 697 (1988).

The provisions of § 127B-1 are not unreasonably burdensome within the meaning of this section and N.C. Const., Art. I, § 19. Poor Richard's, Inc. v. Stone, 322 N.C. 61, 366 S.E.2d 697 (1988).

Challenge to School Financing. — Action for declaratory and injunctive relief brought by minors who were, or would be in the future, enrolled in public schools in the county, and their parents or legal guardians, alleging that the present statutory system of financing public schools in this state resulted in inequities in educational programs and facilities between the public schools within that county, which had a relatively low tax base from which to draw funds, and those in other counties with relatively high tax bases, and that the operation of five separate school systems in that county prohibited effective use of facilities and staff and promoted inequitable use of state and local funds, thus depriving them of equal opportunity to a free public school education in violation of this section, N.C. Const., Art. I, §§ 15 and 19, and Art. IX, § 2(1), failed to allege facts entitling them to relief or conferring jurisdiction on the courts of this State. Britt v. North Carolina State Bd. of Educ., 86 N.C. 282, 357 S.E.2d 432, appeal dismissed, 320 N.C. 790, 361 S.E.2d 71 (1987).

Provisions Held Unconstitutional. —

A county ordinance subjecting businesses which provide male or female "companionship" to various licensing requirements was held to lack any rational, real and substantial relation to any valid objective of the county and thus to offend this section and N.C. Const., Art. I, § 19. Treants Enters., Inc. v. Onslow County, 83 N.C. App. 345, 350 S.E.2d 365 (1986), aff'd, 320 N.C. 776, 360 S.E.2d 783 (1987).

An ordinance enacted to regulate the business of providing male and female companionship was overbroad and not rationally related to a substantial government purpose and violated the State Constitution. Treants Enters., Inc. v. Onslow County, 320 N.C. 776, 360 S.E.2d 783 (1987).

Applied in Davis v. Town of Southern Pines, 116 N.C. App. 663, 449 S.E.2d 240 (1994), cert. denied, 339 N.C. 737, 454 S.E.2d 648 (1995).

Cited in DiDonato v. Wortman, 80 N.C. App. 117, 341 S.E.2d 58 (1986); Johnson v. Ruark Obstetrics & Gynecology Assocs., 89 N.C. App. 154, 365 S.E.2d 909 (1988); Woodard v. North Carolina Local Governmental Employees' Retirement Sys., 108 N.C. App. 378, 424 S.E.2d 431 (1993); Petersen v. Rowe, 337 N.C. 397, 445 S.E.2d 901 (1994); Glen III ex rel. Glen II v. Charlotte-Mecklenburg Sch. Bd., 903 F. Supp. 918 (W.D.N.C. 1995).

OPINIONS OF ATTORNEY GENERAL

Moratorium on Granting of Permits for Hazardous Waste Facilities. — The Governor does not have the authority to issue a moratorium on the granting of permits for hazardous waste facilities in this State. See opinion of Attorney General to Mr. Tom Karnoski, Hazardous Waste Treatment Commission (now the Hazardous Waste Management Commission), 55 N.C.A.G. 73 (1986).

Sec. 2. Sovereignty of the people.

CASE NOTES

Constitutionality of 1970 Ballot. — Defendant's defense to real estate tax liability (based on alleged defects in 1970 ballot which, defendant asserted, rendered the 1970 amendments violative of due process) was barred by laches where defendant waited 18 years before inquiring into the effect of the 1970 ballot and where he participated in the ballot. Franklin County v. Burdick, 103 N.C. App. 496, 405 S.E.2d 783 (1991).

Cited in Bradshaw v. Administrative Office of Courts, 320 N.C. 137, 357 S.E.2d 370 (1987).

OPINIONS OF ATTORNEY GENERAL

Moratorium on Granting of Permits for Hazardous Waste Facilities. — The Governor does not have the authority to issue a moratorium on the granting of permits for hazardous waste facilities in this State. See opinion of Attorney General to Mr. Tom Karnoski, Hazardous Waste Treatment Commission (now the Hazardous Waste Management Commission), 55 N.C.A.G. 73 (1986).

Sec. 6. Separation of powers.

Legal Periodicals. — For article on the "Battle Among the Branches: The Two Hundred Year War," see 65 N.C.L. Rev. 901 (1987).

For note on the separation of powers and the power to appoint, see 66 N.C.L. Rev. 1109 (1988).

For note, "The Forty-Two Hundred Dollar Question: 'May State Agencies Have Discretion in Setting Civil Penalties Under the North Carolina Constitution?'," see 68 N.C.L. Rev. 1035 (1990).

For comment, "Legal Analysis of the Constitutionality of the Water Supply Watershed Protection Act of 1989 and the Hyde Bill," see 29 Wake Forest L. Rev. 1279 (1994).

CASE NOTES

I. In General.
II. Delegation of Legislative Power.

I. IN GENERAL.

Court's Proper Exercise of Jurisdiction. — There is no violation of the Separation of Powers Clause when a court issues an order within its inherent power to do what is reasonably necessary within the scope of its constitutional and statutory jurisdiction. In re Doe, 329 N.C. 743, 407 S.E.2d 798 (1991).

There was no violation of the Separation of Powers Clause when the district court, exercising its exclusive, original jurisdiction, issued the order for a juvenile sex offender's commitment and the order denying the juvenile's conditional release as requested by Division of Youth Services, both of which included dispositional directives regarding the juvenile's needs for specialized sexual offender treatment. In re Doe, 329 N.C. 743, 407 S.E.2d 798 (1991).

Appointment of Director of Office of Administrative Hearings. — It is not a violation of the separation of powers provision of the Constitution for the General Assembly to provide that the Chief Justice of the Supreme Court shall appoint the Director of the Office of Administrative Hearings. State ex rel. Martin v. Melott, 320 N.C. 518, 359 S.E.2d 783 (1987).

The order of the Supreme Court establishing the Client Security Fund and requiring annual payments by attorneys to the Fund was an essential corollary to the court's function, was required for the proper administration of justice, and did not violate the Constitution. Beard v. North Carolina State Bar, 320 N.C. 126, 357 S.E.2d 694 (1987).

Applied in State ex rel. Martin v. Preston, 325 N.C. 438, 385 S.E.2d 473 (1989); News & Observer Publishing Co. v. Poole, 330 N.C. 465, 412 S.E.2d 7 (1992).

Cited in Granville County Bd. of Comm'rs v. North Carolina Hazardous Waste Mgt. Comm'n, 329 N.C. 615, 407 S.E.2d 785 (1991).

II. DELEGATION OF LEGISLATIVE POWER.

Necessity for Adequate Standards, etc. —

The General Assembly must prescribe the standard for an administrative board with sufficient definiteness so that the board is bound by legislative policy and cannot, under the name of finding facts, actually set policy. Farlow v. North Carolina State Bd. of Chiropractic Exmrs., 76 N.C. App. 202, 332 S.E.2d 696, cert. denied and appeal dismissed, 314 N.C. 664, 336 S.E.2d 621 (1985).

Delegation of Power Upheld. —

The proscription of "unethical conduct" in § 90-154 is a sufficiently definite standard so that the Board of Chiropractic Examiners may set policies within it without exercising a legislative function. Farlow v. North Carolina State Bd. of Chiropractic Exmrs., 76 N.C. App. 202, 332 S.E.2d 696, cert. denied and appeal dismissed, 314 N.C. 664, 336 S.E.2d 621 (1985).

OPINIONS OF ATTORNEY GENERAL

Delay of Rules by Review Commission. — An act vesting in the Administrative Rules Review Commission (ARRC), a commission appointed by the General Assembly, the power to delay indefinitely the effective date of duly adopted agency rules which it deems in excess of statutory authority would likely be held to violate this section by vesting the ARRC with judicial powers reserved to the court and with supreme legislative powers reserved to the General Assembly. See opinion of Attorney General to Henson P. Barnes, President Pro Tempore, Senate, 60 N.C.A.G. 70 (1991).

Sec. 7. Suspending laws.

CASE NOTES

Cited in State ex rel. Martin v. Preston, 325 N.C. 438, 385 S.E.2d 473 (1989).

Sec. 8. Representation and taxation.

CASE NOTES

Drainage district assessments are not taxes. Northampton County Drainage Dist. Number One v. Bailey, 326 N.C. 742, 392 S.E.2d 352 (1990).

The order of the Supreme Court establishing the Client Security Fund and requiring annual payments by attorneys to the Fund was an essential corollary to the court's function, was required for the proper administration of justice, and did not violate the Constitution. Beard v. North Carolina State Bar, 320 N.C. 126, 357 S.E.2d 694 (1987).

Cited in State ex rel. Martin v. Preston, 325 N.C. 438, 385 S.E.2d 473 (1989).

Sec. 10. Free elections.

CASE NOTES

Ballot Access Restriction. — The ten percent (10%) numerical signature requirement contained in § 163-122(a)(3) is an unconstitutional ballot access restriction for unaffiliated candidates in violation of the U.S. Const., Amend. I and XIV and N.C. Const., Art. I, § 19 and this section. Obie v. North Carolina State Bd. of Elections, 762 F. Supp. 119 (E.D.N.C. 1991).

Sec. 12. Right of assembly and petition.

CASE NOTES

Stated in State v. Neville, 108 N.C. App. 330, 423 S.E.2d 496 (1992).

Cited in Babb v. Harnett County Bd. of Educ., 118 N.C. App. 291, 454 S.E.2d 833 (1995).

Sec. 13. Religious liberty.

Legal Periodicals. —

For article, "The Concept of Religion in State Constitutions," see 8 Campbell L. Rev. 437 (1986).

For note, "Balancing the Welfare of Children with the Rights of Parents: Peterson v. Rogers and the Role of Religion in Custody Disputes", see 73 N.C.L. Rev. 1271 (1995).

CASE NOTES

Counsel may not attack credibility of a witness because of the witness's religious beliefs or rights of conscience. State v. James, 322 N.C. 320, 367 S.E.2d 669 (1988).

Prosecutor's argument as to defendant's credibility held not to violate this section or § 8C-1, Rules 603 or 610, despite an indirect reference to defendant's affirmation as a witness. State v. James, 322 N.C. 320, 367 S.E.2d 669 (1988).

Biological Parents' Rights Outweighed Adoptive Parents' Rights. — Biological parents constitutionally-protected paramount right to custody, care, and control of their child, including control over his associations, outweighed adoptive parents' interests, including their right to freedom of religion; therefore, inquiry into plaintiffs' religious beliefs, if error, was harmless. Petersen v. Rowe, 337 N.C. 397, 445 S.E.2d 901 (1994).

Cited in Delconte v. State, 313 N.C. 384, 329 S.E.2d 636 (1985); Grace Baptist Church v. City of Oxford, 320 N.C. 439, 358 S.E.2d 372 (1987); State v. Artis, 325 N.C. 278, 384 S.E.2d 470 (1989); Hill v. Cox, 108 N.C. App. 454, 424 S.E.2d 201 (1993).

Sec. 14. Freedom of speech and press.

Legal Periodicals. —

For article, "Of Libel, Language, and Law: New York Times v. Sullivan at Twenty-Five," see 68 N.C.L. Rev. 273 (1990).

CASE NOTES

This section and N.C. Const., Art. I, § 19 do not require that a statewide standard be judicially incorporated into § 14-190.1 in order to render the statute facially valid. State v. Mayes, 323 N.C. 159, 371 S.E.2d 476 (1988), cert. denied, 488 U.S. 1009, 109 S. Ct. 792, 102 L. Ed. 2d 784 (1989).

Previous Federal Claim Does Not Render State Claim Res Judicata. — Claims asserted in the State Court on the basis of this section of the North Carolina Constitution were not identical to the claims asserted by the plaintiff in the Federal Court on the basis of freedom of speech and press under the United States Constitution and dismissal of the state claims on the basis of res judicata was error. Evans v. Cowan, 122 N.C. App. 181, 468 S.E.2d 575 (1996).

The words "shall never be restrained" are a direct personal guarantee of each citizen's right of freedom of speech. Corum v. University of N.C. ex rel. Bd. of Governors, 330 N.C. 761, 413 S.E.2d 276, reh'g denied, 331 N.C. 558, 418 S.E.2d 664, cert. denied, 506 U.S. 985, 113 S. Ct. 493, 121 L. Ed. 2d 431 (1992).

Section 163-274(7), prohibiting anonymous, derogatory charges against candidates for primary or general elections, does not violate the free speech guarantees of the U.S. Const., Amend. I, or this section. State v. Petersilie, 334 N.C. 169, 432 S.E.2d 832 (1993).

Broadcast of Execution. — Plaintiffs (prisoner and television show host) did not have a right under either the First or Fourteenth Amendments to the United States Constitution or under this section to audiotape or videotape prisoner/plaintiff's scheduled execution. Under § 15-190 the execution was under the supervision and control of the warden and, as a matter of law, neither the Secretary of the North Carolina Department of Correction, nor the warden could be mandamused to permit the requested audiotaping or videotaping. Lawson v. Dixon, 336 N.C. 312, 446 S.E.2d 799 (1994).

Applied in Kaplan v. Prolife Action League, 111 N.C. App. 1, 431 S.E.2d 828 (1993).

Cited in Cinema I Video, Inc. v. Thornburg, 83 N.C. App. 544, 351 S.E.2d 305 (1986); State v. Anderson, 322 N.C. 22, 366 S.E.2d 459 (1988); Madison Cablevision, Inc. v. City of Morganton, 325 N.C. 634, 386 S.E.2d 200 (1989); Corum v. University of N.C., 97 N.C. App. 527, 389 S.E.2d 596 (1990); Lenzer v. Flaherty, 106 N.C. App. 496, 418 S.E.2d 276 (1992); Shell v. Wall, 808 F. Supp. 481 (W.D.N.C. 1992); Babb v. Harnett County Bd. of Educ., 118 N.C. App. 291, 454 S.E.2d 833 (1995); North Carolina Council of Churches v. State, 120 N.C. App. 84, 461 S.E.2d 354 (1995).

Sec. 15. Education.

Legal Periodicals. —

For note, "Delconte v. State: Some Thoughts on Home Education," see 64 N.C.L. Rev. 1302 (1986).

For article, "Constitutional Rights of Students, Their Families, and Teachers in the Public Schools," see 10 Campbell L. Rev. 353 (1988).

CASE NOTES

Challenge to School Financing. — Action for declaratory and injunctive relief brought by minors who were or would be in the future enrolled in public schools in the county, and their parents or legal guardians, alleging that the present statutory system of financing public schools in this State resulted in inequities in educational programs and facilities between the public schools within that county, which had a relatively low tax base from which to draw funds, and those in other counties with relatively high tax bases, and that the operation of five separate school systems in that county prohibited effective use of facilities and staff and promoted inequitable use of State and local funds, thus depriving them of equal opportunity to a free public school education in violation of this section, N.C. Const., Art. I, §§ 1 and 19, and Art. IX, § 2(1), failed to allege facts entitling them to relief or conferring jurisdiction on the courts of this State. Britt v. North Carolina State Bd. of Educ., 86 N.C. App. 282, 357 S.E.2d 432, appeal dismissed, 320 N.C. 790, 361 S.E.2d 71 (1987).

No Right to Disseminate Pornography. — The right to an education does not involve the right to disseminate material which, but for its use in an educational context, would otherwise be deemed obscene. Any serious educational value of sexually-explicit materials must be derived, in turn, from some serious literary, artistic, political, or scientific value. State v. Watson, 88 N.C. App. 624, 364 S.E.2d 683, cert. denied, 322 N.C. 485, 370 S.E.2d 235 (1988).

Discipline of Disabled Student Proper. — Plaintiffs, student's parents, offered no evidence to show a violation of any North Carolina statute or the North Carolina Constitution where student diagnosed with attention deficit hyperactivity disorder admitted that he had a gun clip with live bullets in school and he was subjected to external school suspension, his parents attended and participated in disciplinary proceedings, and he was assigned to management school which could accommodate his specialized needs. Glen III ex rel. Glen II v. Charlotte-Mecklenburg Sch. Bd., 903 F. Supp. 918 (W.D.N.C. 1995).

No Qualitative Standard. — The fundamental right under the North Carolina Constitution is limited to one of equal access to education, and it does not embrace a qualitative standard. Leandro v. State, 122 N.C. App. 1, 468 S.E.2d 543 (1996).

Sec. 16. Ex post facto laws.

CASE NOTES

Judicial Abrogation of Common-Law Criminal Principles. — Whereas this decision holds that the year and a day rule as formerly utilized in murder prosecutions is no longer part of the common law of the state, to apply this decision abrogating the year and a day rule to permit defendant to be convicted of murder in the present case would, at the very least, permit his conviction upon less evidence than would have been required to convict him of that crime at the time the victim died and would, for that reason, violate the principles preventing the application of ex post facto laws. The judgment against defendant for second degree murder was vacated where defendant did not die within a year and a day of the acts in question; however, under the circumstances of this case, a conviction for involuntary manslaughter was appropriate. State v. Vance, 328 N.C. 613, 403 S.E.2d 495 (1991).

Timing of Acts and Result of Murder. — Depriving defendant of the defense of the "year and a day" rule based on the Supreme Court's prospective abrogation of that rule in State v. Vance, 328 N.C. 613, 403 S.E.2d 495 (1991) violated the prohibition against ex post facto laws where the murderous acts occurred prior to the abrogation and the victim's death occurred after the abrogation but more than a year and a day after the murderous acts. State v. Robinson, 335 N.C. 146, 436 S.E.2d 125 (1993).

Amendment made in 1991 to §§ 122C-268.1(i) and 122C-276.1(c), which required respondent to bear the burden of proof to show that he was no longer dangerous or mentally ill and opened the hearing to the public, were procedural changes that did not violate substantive rights or protections though they could have disadvantaged respondent. Therefore, there was no violation of the Ex Post Facto Clause. In re Hayes, 111 N.C. App. 384, 432 S.E.2d 862, appeal dismissed, 335 N.C. 173, 436 S.E.2d 376 (1993).

Application Only to Tax Statutes Taxing Retrospectively. — This section applies only to tax statutes "taxing retrospectively sales, purchases, or other acts previously done." Chapter 1052 of Session Laws 1987 (Reg. Sess., 1988) is not a tax or revenue statute within the meaning of N.C. Const., Art. II, § 23. North Carolina E. Mun. Power v. Wake County, 100 N.C. App. 693, 398 S.E.2d 486 (1990), cert. denied, 329 N.C. 270, 407 S.E.2d 838 (1991).

Tax Not Retrospective. — Contention that as to appellant § 105-282.7 was a retrospective tax in violation of this section was without merit, where the statute was ratified in 1981 and did not become effective until January 1, 1982, and where appellant was not taxed under it for any period prior to its enactment. In re Champion Int'l Corp., 74 N.C. App. 639, 329 S.E.2d 691, cert. denied, 314 N.C. 540, 335 S.E.2d 15 (1985).

Sec. 18. Courts shall be open.

Legal Periodicals. —

For note, "Wilder v. Amatex Corp.: A First Step Toward Ameliorating the Effect of Statutes of Repose on Plaintiffs with Delayed Manifestation Diseases," see 64 N.C.L. Rev. 416 (1986).

For note on the six year statutory bar to products liability actions, in light of Tetterton v. Long Manufacturing Co., 314 N.C. 44, 332 S.E.2d 67 (1985), see 64 N.C.L. Rev. 1157 (1986).

For article, "The American Medical Association vs. The American Tort System," see 8 Campbell L. Rev. 241 (1986).

For comment on tort reform, see 10 Campbell L. Rev. 439 (1988).

For article, "North Carolina Employment Law After Coman: Reaffirming Basic Rights in the Workplace," see 24 Wake Forest L. Rev. 905 (1989).

For note, "The North Carolina Supreme Court Engages in Stealthy Judicial Legislation: Doe v. Holt," see 71 N.C.L. Rev. 1227 (1993).

CASE NOTES

I. In General.
II. Access to the Courts.
III. Public Trials.
IV. Delay, Generally.
V. Speedy Criminal Trials.

I. IN GENERAL.

Notice and an opportunity to be heard prior to depriving a person of his property are essential elements of due process of law which are guaranteed by U.S. Const., Amend. XIV and this section. State v. Cox, 90 N.C. App. 742, 370 S.E.2d 260 (1988).

There is no constitutional impediment to arbitration agreements. Miller v. Two State Constr. Co., 118 N.C. App. 412, 455 S.E.2d 678 (1995).

Waiver by Arbitration. — An agreement to arbitrate a dispute is not an unenforceable contract requiring waiver of a jury; thus, the trial court erred in concluding that because arbitration provision did not provide for trial of facts by a jury that it was unconscionable and unenforceable under § 22B-10, and in violation of N.C. Const., Art. I, §§ 18 and 25. Miller v. Two State Constr. Co., 118 N.C. App. 412, 455 S.E.2d 678 (1995).

Use of Closed Circuit Television Held Adequate to Allow Defendant to Confront Child Victim. — Where, in prosecution for taking indecent liberties with a four-year-old child, during voir dire hearing as to victim's competency as a witness, defendant, although absent from the courtroom, was able to hear all testimony, interact freely with his attorney, and through his attorney confront the victim, thereby accomplishing effective cross-examination, the exclusion of defendant did not violate N.C. Const., Art. I, §§ 18, 19 or 23, as the trial court's use of a closed circuit television and its act of providing defendant and his attorney adequate opportunity to communicate during the victim's testimony were sufficient to permit defendant to hear the evidence and to refute it. State v. Jones, 89 N.C. App. 584, 367 S.E.2d 139 (1988).

Prosecutor's Conflict of Interest. — A prosecutor may not be disqualified from prosecuting a criminal action in this State unless and until the trial court determines that an actual conflict of interests exists. In this context, an "actual conflict of interests" is demonstrated where a district attorney or a member of his or her staff has previously represented the defendant with regard to the charges to be prosecuted and, as a result of that former attorney-client relationship, the prosecution has obtained confidential information which may be used to the defendant's detriment at trial. Any order of disqualification ordinarily should be directed only to individual prosecutors who have been exposed to such information. State v. Camacho, 329 N.C. 589, 406 S.E.2d 868 (1991).

District Attorney's Abuse of Calendaring Authority Unconstitutional. — Where the district attorney placed a large number of cases on the printed trial calendar knowing that all of the cases would not be called, thereby providing defendants virtually no notice of which cases were actually going to be called for trial, a tactic often employed by the district attorney in an attempt to surprise criminal defense counsel, the allegations were sufficient to state a claim that the statutes which grant the district attorney calendaring authority were being applied in an unconstitutional manner in the Fourteenth Prosecutorial District. Simeon v. Hardin, 339 N.C. 358, 451 S.E.2d 858 (1994).

Jury Conversations. — Where the record established that the substance of a conversation between a juror and the court related to the juror's having "overheard something about the case," where the court excused the juror, and to insure that "no one should be suspicious" about his ability to be fair and impartial, this juror was removed from the case prior to deliberations, and where no other juror indicated that he or she had overheard anything about the case, the conversation between the court and the juror could not have influenced the verdict. State v. Harrington, 335 N.C. 105, 436 S.E.2d 235 (1993).

Applied in Pangburn v. Saad, 73 N.C. App. 336, 326 S.E.2d 365 (1985).

Stated in State v. Carter, 322 N.C. 709, 370 S.E.2d 553 (1988).

Cited in Walker v. Santos, 70 N.C. App. 623, 320 S.E.2d 407 (1984); DeSoto Trail, Inc. v. Covington Diesel, Inc., 77 N.C. App. 637, 335 S.E.2d 794 (1985); Gardner v. Asbestos Corp., 634 F. Supp. 609 (W.D.N.C. 1986); Atlantic Ins. & Realty Co. v. Davidson, 320 N.C. 159, 357 S.E.2d 668 (1987); Coman v. Thomas Mfg. Co., 325 N.C. 172, 381 S.E.2d 445 (1989); State v. Huff, 325 N.C. 1, 381 S.E.2d 635 (1989); State v. Porter, 326 N.C. 489, 391 S.E.2d 144 (1990); Ragan v. County of Alamance, 98 N.C. App. 636, 391 S.E.2d 825 (1990); Harrison v. Edison Bros. Apparel Stores, 924 F.2d 530 (4th Cir. 1991); In re Alamance County Ct. Facilities, 329 N.C. 84, 405 S.E.2d 125 (1991); State v. McIntosh, 336 N.C. 517, 444 S.E.2d 438 (1994); Babb v. Harnett County Bd. of Educ., 118 N.C. App. 291, 454 S.E.2d 833 (1995); Glen III ex rel. Glen II v. Charlotte-Mecklenburg Sch. Bd., 903 F. Supp. 918 (W.D.N.C. 1995); State v. Chapman, 342 N.C. 330, 464 S.E.2d 661 (1995), cert. denied, — U.S. —, 116 S. Ct. 2560, 135 L. Ed. 2d 1077 (1996).

II. ACCESS TO THE COURTS.

Statutes of Limitations. — Section 1-50 does not violate the "open courts" provision of the North Carolina Constitution. Tetterton v. Long Mfg. Co., 314 N.C. 44, 332 S.E.2d 67 (1985).

Sections 1-50(5) (now 1-50(a)(5)) and 1-15(c) are not unconstitutional as being violative of the open courts provision of the North Carolina Constitution and the equal protection clauses of the State and federal Constitutions. Square D Co. v. C.J. Kern Contractors, 314 N.C. 423, 334 S.E.2d 63 (1985).

Section 1-75.12 Does Not Deny Litigants Access to North Carolina Courts. — Section 1-75.12, which gives the trial court the power to enter a stay pending final disposition of another similar action litigated in another court, does not deny litigants access to North Carolina courts in violation of this section, but merely postpones litigation here pending the resolution of the same matter in another sovereign court. Home Indem. Co. v. Hoechst-Celanese Corp., 99 N.C. App. 322, 393 S.E.2d 118 (1990).

Trial court's application of § 1-75.12 did not violate the "open courts" provision contained in this section. Lawyers Mut. Liab. Ins. Co. v. Nexsen Pruet Jacobs & Pollard, 112 N.C. App. 353, 435 S.E.2d 571 (1993).

Jurisdiction over Justiciable Matters of Civil Nature. — Except for areas specifically placing jurisdiction elsewhere (such as claims under the Workers' Compensation Act), the trial courts of North Carolina have subject matter jurisdiction over all justiciable matters of a civil nature. Harris v. Pembaur, 84 N.C. App. 666, 353 S.E.2d 673 (1987).

Contract dispute between the parties constituted a "justiciable matter" that was "cognizable" in North Carolina trial courts; therefore, the trial judge's determination that there was no subject matter jurisdiction was in error. Harris v. Pembaur, 84 N.C. App. 666, 353 S.E.2d 673 (1987).

III. PUBLIC TRIALS.

The public, and especially the parties, etc. —

A criminal defendant also has the right to a public trial, a right guaranteed by this section and U.S. Const., Amends. VI and XIV. The public, and especially the parties are entitled to see and hear what goes on in the courts. State v. Callahan, 102 N.C. App. 344, 401 S.E.2d 793 (1991).

Judge's Ex Parte Communications with Jury Before Verdict. — Where, during the course of the trial, the presiding trial judge engaged in an ex parte communication with the jury, and prior to reconvening court, the judge entered the jury room where the jurors had gathered and was alone with the jurors, this conduct on the part of the presiding judge violated the defendant's rights under N.C. Const., Art. I, § 23 and this section, and U.S. Const., Amends. VI and XIV. State v. Callahan, 102 N.C. App. 344, 401 S.E.2d 793 (1991).

Civil Commitment Proceedings. — This section does not create a constitutional right on the part of the press and public to attend civil commitment proceedings. WSOC Television, Inc. v. State ex rel. Att'y Gen., 107 N.C. App. 448, 420 S.E.2d 682, cert. denied, 333 N.C. 168, 424 S.E.2d 905 (1992).

Judge's Warning to Restrict Public Egress Was Proper. — Where trial judge informed those in the courtroom that he was concerned that the jury would be distracted by movement of spectators in and out of the room, and where he consequently warned them that if they wished to leave the courtroom, they should do so immediately, for they would not be allowed to do so after closing arguments began, barring an emergency, the order was not a denial of a public trial in violation of this section since the judge did not vacate the courtroom nor bar the courtroom door without due warning to those within and without, and since the judge was authorized under § 15A-1034(a) to impose reasonable limitations on access to the courtroom. State v. Clark, 324 N.C. 146, 377 S.E.2d 54 (1989).

IV. DELAY, GENERALLY.

Delay Not Wilful. — There was no showing that the prosecution wilfully or through neglect or for improper purposes delayed defendant's trial where the delay was due largely to the operation of neutral factors and not to any malevolent intent on the part of the prosecution. State v. Webster, 337 N.C. 674, 447 S.E.2d 349 (1994).

Delay Not Found. — Plaintiff offered no evidence to support the claim that the dual role served by the Attorney General's Office both in representing defendant institution and being legal advisor to State Personnel Commission caused actual bias or unfair prejudice to plaintiff, nor that it created any delay in the disposition of her claims. Dorsey v. UNC-Wilmington, 122 N.C. App. 58, 468 S.E.2d 557 (1996).

V. SPEEDY CRIMINAL TRIALS.

Unless some fixed time limit is prescribed, etc. —

In accord with the main volume. See State v. Bare, 77 N.C. App. 516, 335 S.E.2d 748 (1985), cert. denied, 315 N.C. 392, 338 S.E.2d 881 (1986).

Undue delay which is arbitrary and oppressive or the result of deliberate prosecution efforts to hamper the defense violates the constitutional right to a speedy trial. State v. Bare, 77 N.C. App. 516, 335 S.E.2d 748 (1985), cert. denied, 315 N.C. 392, 338 S.E.2d 881 (1986).

Defendant's failure to assert her speedy trial right sooner in the process did not foreclose her speedy trial claim, but it did weigh somewhat against her contention that she had been unconstitutionally denied a speedy trial. State v. Webster, 337 N.C. 674, 447 S.E.2d 349 (1994).

Burden on Defendant. — The length of a delay is not determinative of whether a violation has occurred; the issue must be resolved on the facts of each case, and the defendant has the burden of establishing that the delay was purposeful or oppressive or by reasonable effort could have been avoided by the State. State v. Bare, 77 N.C. App. 516, 335 S.E.2d 748 (1985), cert. denied, 315 N.C. 392, 338 S.E.2d 881 (1986).

Defendant was not deprived of his constitutional right to a speedy trial as guaranteed by this section, since delay of two and one-half years was not inordinate, State had a legitimate reason for its delay and defendant showed no prejudice resulting from the delay. State v. Avery, 95 N.C. App. 572, 383 S.E.2d 224 (1989), appeal dismissed and cert. denied, 326 N.C. 51, 389 S.E.2d 96 (1990).

Where there was some prejudice to defendant caused by the delay in her trial, the weight of it in the balancing process was diminished by the absence of any impairment to her defense against the criminal charge and the absence of substantial pretrial incarceration. State v. Webster, 337 N.C. 674, 447 S.E.2d 349 (1994).

Sec. 19. Law of the land; equal protection of the laws.

Legal Periodicals. —

For 1984 survey, "Double Jeopardy and Substantial Rights in North Carolina Appeals," see 63 N.C.L. Rev. 1061 (1985).

For note on the Declaratory Judgment Act and due process in expulsions from voluntary trade associations, in light of Harrison v. Gaston Bd. of Realtors, Inc., 311 N.C. 230, 316 S.E.2d 59 (1984), see 21 Wake Forest L. Rev. 121 (1985).

For note, "Wilder v. Amatex Corp.: A First Step Toward Ameliorating the Effect of Statutes of Repose on Plaintiffs with Delayed Manifestation Diseases," see 64 N.C.L. Rev. 416 (1986).

For article, "The Battle to Preserve North Carolina's Estuarine Marshes: The 1985 Legislation, Private Claims to Estuarine Marshes, Denial of Permits to Fill, and the Public Trust," see 64 N.C.L. Rev. 565 (1986).

For note on the six year statutory bar to products liability actions, in light of Tetterton v. Long Manufacturing Co., 314 N.C. 44, 332 S.E.2d 67 (1985), see 64 N.C.L. Rev. 1157 (1986).

For note on the retroactive application of section 39-13.6 under a vested rights analysis, see 65 N.C.L. Rev. 1195 (1987).

For note discussing the evolution of the law governing double jeopardy and multiple punishments in a single prosecution context, particularly with regard to larceny and breaking and entering, in light of State v. Gardner, 315 N.C. 444, 340 S.E.2d 701 (1986), see 65 N.C.L. Rev. 1267 (1987).

For note, "Does Double Jeopardy Include a Double Standard?," see 66 N.C.L. Rev. 1191 (1988).

For article, "In Defense of Aston Park: The Case for State Substantive Due Process Review of Health Care Regulation," see 68 N.C.L. Rev. 253 (1990).

For article, "Ake Revisited: Expert Psychiatric Witnesses Remain Beyond Reach for the Indigent," see 68 N.C.L. Rev. 763 (1990).

For note, "United States v. Halper: Remedial Justice and Double Jeopardy," see 68 N.C.L. Rev. 979 (1990).

For essay, "Liberty, the 'Law of the Land,' and Abortion in North Carolina," see 71 N.C.L. Rev. 1839 (1993).

CASE NOTES

I. General Consideration.
II. Due Process and the "Law of the Land".
III. Equal Protection.
IV. Rights of Defendants.
  A. In General.
  B. Composition of Juries.
  C. Double Jeopardy.
  D. Right to Counsel.
  E. Time to Prepare Defense.
  F. Witnesses.
  H. Self-Incrimination.
  I. Restraint of Defendant at Trial.
  J. Punishment.
VI. Police Power.

VII. Taking of Private Property for Public Use.
  A. In General.
  C. Compensation.
  E. Illustrative Cases.
VIII. Taxation.
IX. Miscellaneous Rights.
X. Challenges to Statutes, etc., on Constitutional Grounds.
XI. Illustrative Cases.
  A. Statutes, Proceedings, etc., Upheld.
  B. Statutes, Proceedings, etc., Held Unconstitutional.

I. GENERAL CONSIDERATION.

Federal Decisions Do Not Control Interpretation by North Carolina Supreme Court. — Decisions by the federal courts as to the construction and effect of the due process clause of the United States Constitution are binding on the North Carolina Supreme Court; however, such decisions, although persuasive, do not control an interpretation by the North Carolina Supreme Court of this section. The North Carolina Supreme Court will therefore make an independent determination of the constitutional rights of the plaintiffs under this section. McNeill v. Harnett County, 327 N.C. 552, 398 S.E.2d 475 (1990).

Claims asserted in the State Court on the basis of the North Carolina Constitution were not identical to the claims asserted by the plaintiff in the Federal Court on the basis of freedom of speech and press under the United States Constitution and dismissal of the state claims on the basis of res judicata was error. Evans v. Cowan, 122 N.C. App. 181, 468 S.E.2d 575 (1996).

N.C. Const., Art. I, § 14 and this section do not require that a statewide standard be judicially incorporated into § 14-190.1 in order to render the statute facially valid. State v. Mayes, 323 N.C. 159, 371 S.E.2d 476 (1988), cert. denied, 488 U.S. 1009, 109 S. Ct. 792, 102 L. Ed. 2d 784 (1989).

Requirement That Taxpayer Reduce His Carryover Losses Not Violative of This Section. — The requirement that the taxpayer reduce his North Carolina carryover losses by his non-North Carolina income did not result in a sophisticated scheme which belatedly taxed the non-North Carolina income and did not violate either the due process clause of the United States Constitution or the law of the land clause of this section. Aronov v. Secretary of Revenue, 323 N.C. 132, 371 S.E.2d 468, rehearing denied, 323 N.C. 480, 373 S.E.2d 860 (1988), cert. denied, 489 U.S. 1096, 109 S. Ct. 1568, 103 L. Ed. 2d 935 (1989).

A governmental agency is not precluded from competing with its franchisee, despite the fact that the value of the franchise is diminished or destroyed by such competition. Such competition does not result in a taking or injuring of the franchisee's property without due process of law. Stillings v. City of Winston-Salem, 311 N.C. 689, 319 S.E.2d 233 (1984).

Applied in State v. Rogers, 68 N.C. App. 358, 315 S.E.2d 492 (1984); McDowell v. Estate of Anderson, 69 N.C. App. 725, 318 S.E.2d 258 (1984); State v. Rose, 312 N.C. 441, 323 S.E.2d 339 (1984); Pangburn v. Saad, 73 N.C. App. 336, 326 S.E.2d 365 (1985); State v. Raines, 319 N.C. 258, 354 S.E.2d 486 (1987); In re Murphy, 105 N.C. App. 651, 414 S.E.2d 396 (1992); State v. Bromfield, 332 N.C. 24, 418 S.E.2d 491 (1992); State v. Walker, 332 N.C. 520, 422 S.E.2d 716 (1992); Davis v. Town of Southern Pines, 116 N.C. App. 663, 449 S.E.2d 240 (1994), cert. denied, 339 N.C. 737, 454 S.E.2d 648 (1995); Eastern Appraisal Servs., Inc. v. State, 118 N.C. App. 692, 457 S.E.2d 312 (1995).

Stated in Ervin v. Speece, 72 N.C. App. 366, 324 S.E.2d 299 (1985); Knight v. City of Wilmington, 73 N.C. App. 254, 326 S.E.2d 376 (1985); Ratton v. Ratton, 73 N.C. App. 642, 327 S.E.2d 1 (1985); State v. James, 111 N.C. App. 785, 433 S.E.2d 755 (1993).

Cited in Cabarrus County v. City of Charlotte, 71 N.C. App. 192, 321 S.E.2d 476 (1984); State ex rel. Banking Comm'n v. Citicorp Sav. Indus. Bank, 74 N.C. App. 474, 328 S.E.2d 895 (1985); State v. Avery, 315 N.C. 1, 337 S.E.2d 786 (1985); Town of Emerald Isle v. State, 78 N.C. App. 736, 338 S.E.2d 581 (1986); United Va. Bank v. Air-Lift Assocs., 79 N.C. App. 315, 339 S.E.2d 90 (1986); State v. Perry, 316 N.C. App. 87, 340 S.E.2d 450 (1986); Yates v. Jamison, 782 F.2d 1182 (4th Cir. 1986); DiDonato v. Wortman, 80 N.C. App. 117, 341 S.E. 2d 58 (1986); State v. Kuplen, 316 N.C. 387, 343 S.E.2d 793 (1986); State v. Gilliam, 317 N.C. 293, 344 S.E.2d 783 (1986); Pritchard v. Elizabeth City, 81 N.C. App. 543, 344 S.E.2d 821 (1986); State v. Hurst, 82 N.C. App. 1, 346 S.E.2d 8 (1986); Cinema I Video, Inc. v. Thornburg, 83 N.C. App. 544, 351 S.E.2d 305 (1986); State v. Stokes, 319 N.C. 1, 352 S.E.2d 653 (1987); State v. Jones, 85 N.C. App. 56, 354 S.E.2d 251, cert. denied, 320 N.C. 173, 358 S.E.2d 61, cert. denied, 484 U.S. 969, 108 S. Ct. 465, 98 L. Ed. 2d 404 (1987); State v. Robbins, 319 N.C. 465, 356 S.E.2d 279 (1987); State v. Pakulski, 319 N.C. 562, 356 S.E.2d 319 (1987); State v. Carson, 320 N.C. 328, 357 S.E.2d 662 (1987); Atlantic Ins. & Realty Co. v. Davidson, 320 N.C. 159, 357 S.E.2d 668 (1987); Jackson v. Housing Auth., 321 N.C. 584, 364 S.E.2d 416 (1988); State v. Green, 321 N.C. 594, 365 S.E.2d 587 (1988); Johnson v. Ruark Obstetrics & Gynecology Assocs., 89 N.C. App. 154, 365 S.E.2d 909 (1988); Empire Distribs. of N.C., Inc. v. Schieffelin & Co., 677 F. Supp. 847 (W.D.N.C. 1988); State v. Anderson, 322 N.C. 22, 366 S.E.2d 459 (1988); State v. Agudelo, 89 N.C. App. 640, 366 S.E.2d 921 (1988); Hedrick v. Hedrick, 90 N.C. App. 151, 368 S.E.2d 14 (1988); Truesdale v. University of N.C., 91 N.C. App. 186, 371 S.E.2d 503 (1988); State v. Ghaffar, 93 N.C. App. 281, 377 S.E.2d 818 (1989); State ex rel. Utils. Comm'n v. Thornburg, 324 N.C. 478, 380 S.E.2d 112 (1989); In re Moravian Home, Inc., 95 N.C. App. 324, 382 S.E.2d 772 (1989); State v. Artis, 325 N.C. 278, 384 S.E.2d 470 (1989); State v. Davis, 96 N.C. App. 545, 386 S.E.2d 743 (1989); State v. Jones, 97 N.C. App. 189, 388 S.E.2d 213 (1990); Harwood v. Johnson, 326 N.C. 231, 388 S.E.2d 439 (1990); Corum v. University of N.C., 97 N.C. App. 527, 389 S.E.2d 596 (1990); Dunn v. Pate, 98 N.C. App. 351, 390 S.E.2d 712 (1990); Ragan v. County of Alamance, 98 N.C. App. 636, 391 S.E.2d 825 (1990); State v. Smith, 99 N.C. App. 184, 392 S.E.2d 625 (1990); Hawkins v. Hawkins, 101 N.C. App. 529, 400 S.E.2d 472 (1991); Weston v. Carolina Medicorp, Inc., 102 N.C. App. 370, 402 S.E.2d 653 (1991); State v. Camacho, 329 N.C. 589, 406 S.E.2d 868 (1991); State v. Robinson, 330 N.C. 1, 409 S.E.2d 288 (1991); State v. Maye, 104 N.C. App. 437, 410 S.E.2d 8 (1991); Howell v. Town of Carolina Beach, 106 N.C. App. 410, 417 S.E.2d 277 (1992); Blackwelder v. City of Winston-Salem, 332 N.C. 319, 420 S.E.2d 432 (1992); State v. Cunningham, 108 N.C. App. 185, 423 S.E.2d 802 (1992); Woodard v. North Carolina Local Governmental Employees' Retirement Sys., 108 N.C. App. 378, 424 S.E.2d 431 (1993); State v. Ainsworth, 109 N.C. App. 136, 426 S.E.2d 410 (1993); Dunn v. Pate, 334 N.C. 115, 431 S.E.2d 178 (1993); State v. Webster, 111 N.C. App. 72, 431 S.E.2d 808 (1993), aff'd, 337 N.C. 674, 447 S.E.2d 349 (1994); Alt v. Parker, 112 N.C. App. 307, 435 S.E.2d 773 (1993); State v. Baynes, 114 N.C. App. 165, 442 S.E.2d 529 (1994); State v. McIntosh, 336 N.C. 517, 444 S.E.2d 438 (1994); Petersen v. Rowe, 337 N.C. 397, 445 S.E.2d 901 (1994); State v. Ward, 338 N.C. 64, 449 S.E.2d 709 (1994), cert. denied, — U.S. —, 115 S. Ct. 2014, 131 L. Ed. 2d 1013 (1995); State v. Williams, 339 N.C. 1, 452 S.E.2d 245 (1994), cert. denied, — U.S. —, 116 S. Ct. 109, 133 L. Ed. 2d 61 (1995); Babb v. Harnett County Bd. of Educ., 118 N.C. App. 291, 454 S.E.2d 833 (1995); State v. Miller, 339 N.C. 663, 455 S.E.2d 137, rehearing denied, 340 N.C. 118, 458 S.E.2d 183 (1995); State v. Burr, 341 N.C. 263, 461 S.E.2d 602 (1995); Walters v. Blair, 120 N.C. App. 398, 462 S.E.2d 232 (1995); State v. Clyburn, 120 N.C. App. 377, 462 S.E.2d 538 (1995); State v. Robinson, 342 N.C. 74, 463 S.E.2d 218 (1995); State v. Jaynes, 342 N.C. 249, 464 S.E.2d 448 (1995); State v. Chapman, 342 N.C. 330, 464 S.E.2d 661 (1995), cert. denied, — U.S. —, 116 S. Ct. 2560, 135 L. Ed. 2d 1077 (1996); Glen III ex rel. Glen II v. Charlotte-Mecklenburg Sch. Bd., 903 F. Supp. 918 (W.D.N.C. 1995).

II. DUE PROCESS AND THE "LAW OF THE LAND".

The "law of the land" is equivalent, etc. —

The term "law of the land," as used in this section, is synonymous with "due process of law" as that term is applied under U.S. Const., Amend. XIV. In re Smith, 82 N.C. App. 107, 345 S.E.2d 423 (1986); State v. Smith, 90 N.C. App. 161, 368 S.E.2d 33 (1988), aff'd, 323 N.C. 703, 374 S.E.2d 866, cert. denied, 490 U.S. 1100, 109 S. Ct. 2453, 104 L. Ed. 2d 1007 (1989).

"Law of the land" is synonymous with "due process of law" under the Fourteenth Amendment, and United States Supreme Court interpretations of the latter, though not binding, are highly persuasive in construing the former. Bentley v. North Carolina Ins. Guar. Ass'n, 107 N.C. App. 1, 418 S.E.2d 705 (1992).

Whether a statute violates the law

of the land clause is a question of degree and reasonableness in relation to the public good likely to result from it. Lowe v. Tarble, 313 N.C. 460, 329 S.E.2d 648 (1985).

This section is synonymous with due process clause of the U.S. Const., Amend. XIV. McNeill v. Harnett County, 327 N.C. 552, 398 S.E.2d 475 (1990).

Federal Due Process Decisions Persuasive. — "Law of the land" is equivalent to the federal Fourteenth Amendment "due process of law," and federal court interpretations of the latter, though not binding, are highly persuasive in construing our own amendment. Armstrong v. Armstrong, 85 N.C. App. 93, 354 S.E.2d 350 (1987), rev'd on other grounds, 322 N.C. 396, 368 S.E.2d 595 (1988); State v. Smith, 90 N.C. App. 161, 368 S.E.2d 33 (1988), aff'd, 323 N.C. 703, 374 S.E.2d 866, cert. denied, 490 U.S. 1100, 109 S. Ct. 2453, 104 L. Ed. 2d 1007 (1989).

The North Carolina Supreme Court would employ a different method for deciding what procedural safeguards are due under the "law of the land" clause to a person deprived of a protected interest than the United States Supreme Court has proposed for deciding similar questions under the due process clause. Henry v. Edmisten, 315 N.C. 474, 340 S.E.2d 720 (1986).

Statute Must Serve Legitimate Purpose and Be Rationally Related Thereto. — For a statute to be within the limits set by the federal due process clause and the North Carolina "law of the land" provision, all that is required is that the statute serve a legitimate purpose of state government and be rationally related to the achievement of that purpose. Shipman v. North Carolina Private Protective Servs. Bd., 82 N.C. App. 441, 346 S.E.2d 295, cert. denied and appeal dismissed, 318 N.C. 509, 349 S.E.2d 866 (1986).

A legitimate entitlement does not always rise to the level of "property" protected against "taking" by the due process clause of the State and federal Constitutions. Armstrong v. Armstrong, 85 N.C. App. 93, 354 S.E.2d 350 (1987), rev'd on other grounds, 322 N.C. 396, 368 S.E.2d 595 (1988).

Right to military retirement pay is not a constitutionally protected "vested property right"; the right to retirement pay is a creature of federal statute, not private contract. Armstrong v. Armstrong, 85 N.C. App. 93, 354 S.E.2d 350 (1987), rev'd on other grounds, 322 N.C. 396, 368 S.E.2d 595 (1988).

Reclassification of Retirement Pay as Marital Property. — Defendant's right to his retirement pay was "vested" such that it could be included as marital property under § 50-20(b), yet his right to this government benefit was never "so far perfected as to permit no statutory interference." Thus the legislature's reclassification of defendant's military retirement pay as marital property violated neither the Constitutional guarantees of due process nor the law of the land. Armstrong v. Armstrong, 85 N.C. App. 93, 354 S.E.2d 350 (1987), rev'd on other grounds, 322 N.C. 396, 368 S.E.2d 595 (1988).

A tenant in a publicly subsidized housing project is entitled to due process protection. Roanoke Chowan Regional Hous. Auth. v. Vaughan, 81 N.C. App. 354, 344 S.E.2d 578, cert. denied, 317 N.C. 706, 347 S.E.2d 439 (1986).

When the furtherance of a legitimate state interest requires the State to engage in prompt remedial action adverse to an individual interest protected by law, and the action proposed by the State is reasonably related to furthering the state's interest, the law of the land ordinarily requires no more than that before such action is undertaken, a judicial officer determine that there is probable cause to believe that the conditions which would justify the action exist. Henry v. Edmisten, 315 N.C. 474, 340 S.E.2d 720 (1986).

The "Law of the Land" Requires Notice and Opportunity to Be Heard. — The "law of the land" clause contained in this section mandates that a party be given notice and an opportunity to be heard before he or she can be deprived of a legal claim or defense. First Union Nat'l Bank v. Rolfe, 83 N.C. App. 625, 351 S.E.2d 117 (1986).

And to Notice and Opportunity to Be Heard. —

The defendant, who had defaulted on the original complaint which alleged that she was a resident of this State, was entitled to notice of the plaintiff's subsequent motion to declare that none of her property was exempt by virtue of nonresidency and an opportunity to contest the factual allegations as to her nonresidency; where she was given neither notice nor an opportunity to be heard, in violation of statutory and constitutional provisions, the order declaring that her property was not exempt was invalid, and she was entitled to relief therefrom pursuant to § 1A-1, Rule 60(b)(4). First Union Nat'l Bank v. Rolfe, 83 N.C. App. 625, 351 S.E.2d 117 (1986).

Appraisal clause did not deprive plaintiff of his right to due process under the North Carolina Constitution. Bentley v. North Carolina Ins. Guar. Ass'n, 107 N.C. App. 1, 418 S.E.2d 705 (1992).

Court reporter's allegedly poor transcription of murder trial proceedings did not deny defendant due process where defendant failed to point to any significantly incoherent, inconsistent or senseless language in the transcript, where there was no indication of efforts to work with either the court reporter or the district attorney to attempt to correct them and where there was no suggestion that the transcript could not have been reconstructed if this were truly necessary for a proper understanding of the case on appeal. State v. Robinson, 327 N.C. 346, 395 S.E.2d 402 (1990).

The chemical analysis statute (§ 20-139.1) does not violate the Law of the Land Clause of Art. I, § 19 of the North Carolina Constitution. State v. Jones, 106 N.C. App. 214, 415 S.E.2d 774 (1992).

Passage of Ordinance Mandating Connection to Sewer System. — The law of the land clause does not require notice and opportunity for hearing prior to the passage of an ordinance mandating connection to a sewer system adopted under the authority of § 153A-284; to require notice and opportunity for hearing to all individual property owners prior to the adoption of an ordinance mandating connection of improved properties pursuant to the enabling act would be burdensome, costly to local governments, and not consistent with procedures employed in the exercise of other police powers. McNeill v. Harnett County, 327 N.C. 552, 398 S.E.2d 475 (1990).

No Due Process Right of Entitlement in Terminable at Will Contract. — Where there was nothing in the record which suggested that plaintiff had a contract for a definite term, her contract of employment was terminable at the will of either party, irrespective of the quality of performance, and plaintiff had property interest in employment and no legitimate claim of entitlement under the due process clause. Peele v. Provident Mut. Life Ins. Co., 90 N.C. App. 447, 368 S.E.2d 892, appeal dismissed, 323 N.C. 366, 373 S.E.2d 547 (1988).

City of Charlotte's grievance procedure was not adopted pursuant to an ordinance or expressly incorporated by the City Council into plaintiff's employment contract and the undisputed material facts show that plaintiff was nothing more than an "at-will" employee, and, therefore, he was not entitled to the procedural safeguards of U.S. Const., Amend. XIV or N.C. Const., Art. I, § 19 prior to termination. Reid v. White, 703 F. Supp. 428 (W.D.N.C. 1988).

Unilateral Expectation of Continued Employment Did Not Create Property Interest. — Plaintiff failed to raise genuine issue of material fact that he had more than a unilateral expectation of continued employment and such abstract desires are insufficient to create a property interest protected under U.S. Const., Amend. XIV or N.C. Const., Art. I, § 19. Reid v. White, 703 F. Supp. 428 (W.D.N.C. 1988).

Due process "property" interest in continued employment. — Statutory creation of personnel advisory board for sheriff's department to hear appeals of employee dismissal and disciplinary action, receive evidence, and make recommendations to sheriff gave right to dismissed employees to appeal to the board and gave employees due process "property" interest in continued employment. Penland v. Long, 922 F. Supp. 1085 (W.D.N.C. 1996).

Due process "liberty" interest in employees' reputations. — A constitutional liberty interest was implicated and the right to procedural due process required when statements of sheriff suggested employees of jail were involved in assault on inmate, and employees were dismissed, which could falsely stigmatize employees, who had a statutory right to appeal dismissal to personnel advisory board for sheriff's department. Penland v. Long, 922 F. Supp. 1085 (W.D.N.C. 1996).

Utilities Commission's order requiring that monies collected pursuant to a line loss and compressor fuel charge be included in the Industrial Sales Trucker (IST) did not amount to an impairment of contract in violation of U.S. Const., Art. I, § 10 nor an unlawful taking of property other than by the law of the land or without due process in violation of N.C. Const., Art. I, § 19. State ex rel. Utilities Comm'n v. North Carolina Natural Gas Corp., 323 N.C. 630, 375 S.E.2d 147 (1989).

Reasonable Exercise of State Police Power. — This section imposes flexible restraints on the exercise of state police power which are satisfied if the act in question is not unreasonable, arbitrary or capricious, and ... the means selected shall have a real and substantial relation to the object sought to be obtained. McNeill v. Harnett County, 327 N.C. 552, 398 S.E.2d 475 (1990).

Establishment and Operation of Sewer System. — The establishment and operation of a sewer system by the sewer district and the county is a valid exercise of the police power under this section. McNeill v. Harnett County, 327 N.C. 552, 398 S.E.2d 475 (1990).

Settlement Proceedings. — Discretion given trial court by subsection (j) of § 97-10.2 (statute giving trial court discretion as to how to distribute settlement proceeds from third-party tort-feasor's insurer between injured worker and workers' compensation carrier) does not violate United States Constitution or this section. Allen v. Rupard, 100 N.C. App. 490, 397 S.E.2d 330 (1990), appeal withdrawn, 328 N.C. 328, 404 S.E.2d 864 (1992).

Water and Sewer Line Connection Charges. — Section 153A-284 and the county mandating ordinances met the requirements of both the federal and State Constitutions in authorizing the imposition of connection charges and user/availability fees related to mandated connections. McNeill v. Harnett County, 327 N.C. 552, 398 S.E.2d 475 (1990).

County Denial of Access to Sewer Line for Improper Motives. — Where county denied access to sewer line based on improper motives, the denial of a benefit for an unrelated reason constituted a violation of due process principles. Browning-Ferris Indus. of S. Atl., Inc. v. Wake County, 905 F. Supp. 312 (E.D.N.C. 1995).

County ordinance regulating off-premises signs larger than 15 square feet held to meet the constitutional requirements of due process. Summey Outdoor Adv., Inc. v. County of Henderson, 96 N.C. App. 533, 386 S.E.2d 439 (1989).

III. EQUAL PROTECTION.

To withstand an equal protection claim, etc. —

This section requires that if a class is created there must be a reasonable basis for such classification and the consequent difference in treatment under the law. This means that the creation of the class must be reasonably related to the accomplishment of some purpose which the legislature has the power to reach. Durham Council of Blind v. Edmisten, 79 N.C. App. 156, 339 S.E.2d 84, cert. denied and appeal dismissed, 316 N.C. 552, 344 S.E.2d 5 (1986).

Test Is Reasonableness, etc. —

In the area of economics and social welfare, a statute containing a legislative classification which is rationally related to a legitimate state objective does not violate this section or the equal protection clause of U.S. Const., Amend. XIV. The traditional equal-protection test does not require the very best classification in the light of a legislative or regulatory purpose, but does require that such classification in relation to such purpose attain a minimum (undefined and undefinable) level of rationality. State v. Stanley, 79 N.C. App. 379, 339 S.E.2d 668 (1986).

The ownership distinctions of §§ 105-277.2(4)b and 105-277.2(5a) satisfy the equal protection requirements of the State and federal Constitutions. In re Consol. Appeals of Certain Timber Cos., 98 N.C. App. 412, 391 S.E.2d 503 (1990).

Test to Determine Blood Alcohol Content. — All individuals arrested for driving while impaired who are tested under the model 900 breathalyzer are given the same initial test to determine blood alcohol content. The regulations merely treat the same group of people in a different way depending on the results of the first test. This classification is not of the type that can be considered a denial of equal protection. State v. Garvick, 98 N.C. App. 556, 392 S.E.2d 115 (1990).

Review of Annexation Where Violation of Fundamental Right Not Alleged. — In a case alleging that annexation under a local act was arbitrary and capricious in violation of the equal protection clause, but not contending that the annexation violated a fundamental right or created a suspect class, a less heightened, lower tier avenue of review was available. Piedmont Ford Truck Sales, Inc. v. City of Greensboro, 90 N.C. App. 692, 370 S.E.2d 262 (1988), rev'd on other grounds, 324 N.C. 499, 380 S.E.2d 107 (1989).

The ban on the use or possession of tobacco products by students at school is a valid exercise of the authority delegated to the various boards of education by the legislature, and does not violate the guarantee of equal protection contained in U.S. Const., Amend. XIV and this section. Craig v. Buncombe County Bd. of Educ., 80 N.C. App. 683, 343 S.E.2d 222, appeal dismissed, 318 N.C. 281, 348 S.E.2d 138 (1986).

Landowners in Drainage District Deprived of Vote. — Where some landowners who lived in a drainage district could vote for the clerk who appointed the commissioners of the drainage district and some landowners could not, the defendant nonvoters had been deprived of a fundamental right; furthermore, plaintiff drainage district failed to show that the classification of voters in this case was necessary to promote a compelling governmental interest; therefore, defendants were deprived equal protection of the laws in violation of this section. Northampton County Drainage Dist. Number One v. Bailey, 326 N.C. 742, 392 S.E.2d 352 (1990).

IV. RIGHTS OF DEFENDANTS.

A. In General.

No Right to Same Judge for Pretrial and Trial. — There is no right to have the same judge hear all pretrial motions and other procedural matters as well as preside over the trial itself, whether the trial is complicated or straightforward. State v. McLaughlin, 323 N.C. 68, 372 S.E.2d 49 (1988), sentence vacated and remanded for further consideration at 494 U.S. 1021, 110 S. Ct. 1463, 108 L. Ed. 2d 601 (1990), in light of McKoy v. North Carolina, 494 U.S. 433, 110 S. Ct. 1227, 108 L. Ed. 2d 369 (1990).

Promise by Police Officer. — Police officer's promise not to prosecute the defendant as an habitual offender was just as capable of implicating the defendant's constitutional rights as a promise made by a prosecutor, once the right to counsel had attached or custodial interrogation begun, and the protections of due process necessarily arose. State v. Sturgill, 121 N.C. App. 629, 469 S.E.2d 557 (1996).

Setting Aside of Judgment on Negotiated Plea Held Error. — Where negotiated plea had been adjudicated and sentence had been imposed, no valid reason had been offered by the State to set aside that plea and adjudication, and defendant could not again be tried for the charges which underlied the indictments without twice being placed in jeopardy, trial judge's setting aside of the judgment which had been entered on the negotiated plea agreement was error. State v. Johnson, 95 N.C. App. 757, 383 S.E.2d 692 (1989).

Acquittal of one coprincipal does not bar convictions of the other. State v. Taylor, 337 N.C. 597, 447 S.E.2d 360 (1994).

Statement of Defendant at Sentencing Hearing. — This section, while permitting a defendant to speak at sentencing hearing, does not require the trial court to personally address the defendant and ask him if he wishes to make a statement in his own behalf. State v. McRae, 70 N.C. App. 779, 320 S.E.2d 914 (1984), cert. denied, 313 N.C. 175, 326 S.E.2d 35 (1985).

B. Composition of Juries.

Petit juries must be drawn from a source fairly representative of the community; however, petit juries actually chosen need not mirror the community nor reflect the various distinctive groups in the population. State v. Davis, 325 N.C. 607, 386 S.E.2d 418 (1989), cert. denied, 496 U.S. 905, 110 S. Ct. 2587, 110 L. Ed. 2d 268 (1990).

Selection of Grand Jury Foreman by Racially Neutral Standard. — A method of selecting a grand jury foreman that meets the racially neutral standard must ensure that all grand jurors are considered by the presiding judge for his selection and that his selection be made on a racially neutral basis. State v. Cofield, 324 N.C. 452, 379 S.E.2d 834 (1989).

Prima Facie Case of Racial Discrimination in Selection of Grand Jury Foreman. — A black defendant may make out a prima facie case of racial discrimination in the grand jury foreman's selection by showing either (1) that the selection procedure itself was not racially neutral, or (2) that for a substantial period in the past, relatively few blacks have served in the position of foreman even though a substantial number have been selected to serve as members of grand juries; the State may rebut such a prima facie case on remand by offering evidence that the process used in selecting the grand jury foreman was in fact racially neutral. State v. Cofield, 320 N.C. 297, 357 S.E.2d 622 (1987).

Evidence Held Insufficient, etc. — Defendant found guilty of murder and robbery failed to establish a prima facie case of racial discrimination, or a violation of this section, in the State's use of its peremptory challenges where the State's questions during voir dire focused on the prospective juror's feelings about capital punishment and the age of the juror, or his or her children, as compared with defendant's age; the venire persons were brought into the courtroom individually, so neither defendant nor the State knew how many black citizens were present in the venire or whether a black citizen would be examined next, and three of the first four jurors seated were black, both defendant and the victim were black, thus diminishing the likelihood that racial issues were inextricably bound up with the conduct of the trial. State v. Davis, 325 N.C. 607, 386 S.E.2d 418 (1989), cert. denied, 496 U.S. 905, 110 S. Ct. 2587, 110 L. Ed. 2d 268 (1990).

State's Challenges to Jurors Opposed to Death Penalty, etc. —

The practice of "death qualifying" juries in capital cases violates neither the United States Constitution nor this section of the North Carolina Constitution. State v. Barts, 316 N.C. 666, 343 S.E.2d 828 (1986); State v. Johnson, 317 N.C. 343, 346 S.E.2d 596 (1986); State v. Smith, 320 N.C. 404, 358 S.E.2d 329 (1987).

It was not error under this section or N.C. Const., Art. I, § 24 for the prosecution to use its peremptory challenges to excuse veniremen who had qualms about the death penalty, but were not excludable pursuant to Witherspoon v. Illinois, 391 U.S. 510, 88 S. Ct. 1770, 20 L. Ed. 2d 776, rehearing denied, 393 U.S. 898, 89 S. Ct. 67, 21 L. Ed. 2d 186 (1968); State v. Allen, 323 N.C. 208, 372 S.E.2d 855 (1988), sentence vacated and remanded for further consideration at 494 U.S. 1021, 110 S. Ct. 1463, 108 L. Ed. 2d 601 (1990), in light of McKoy v. North Carolina, 494 U.S. 433, 110 S. Ct. 1227, 108 L. Ed. 2d 369 (1990), rehearing denied, 507 U.S. 1046, 113 S. Ct. 1885, 123 L. Ed. 2d 503 (1993).

Exclusion Due to Bias Against Death Penalty. — Where prospective juror in a first-degree murder prosecution initially responded to both the prosecutor and the court that she did not have any moral or religious convictions against, and could vote for, the death penalty, but she subsequently responded, upon further questioning by the prosecutor, that she would vote against the death penalty without regard to the evidence and notwithstanding the facts or circumstances, and upon further questioning by the court, she was unable to affirmatively agree to follow the law and recommend a sentence based on the evidence and the law and that she would be trying to find ways she could vote against the death penalty and would be predisposed or biased in some respect, the trial court did not err in excusing prospective juror for cause. State v. Jennings, 333 N.C. 579, 430 S.E.2d 188 (1993), cert. denied, 510 U.S. 1028, 114 S. Ct. 644, 126 L. Ed. 2d 602 (1994).

Racial discrimination in the selection of a grand jury foreman from a panel of grand jurors selected in a nondiscriminatory manner violates this section and N.C. Const., Art. I, § 26. State v. Cofield, 320 N.C. 297, 357 S.E.2d 622 (1987).

C. Double Jeopardy.

Where multiple punishment is involved, the double jeopardy clause acts as a restraint on the prosecutor and the courts, not the legislature. State v. Gardner, 315 N.C. 444, 340 S.E.2d 701 (1986).

And Courts May Not Impose More Punishment Than Intended by Legislature. — The double jeopardy clauses of both the United States and North Carolina Constitutions prohibit a court from imposing more punishment than that intended by the legislature. State v. Gardner, 315 N.C. 444, 340 S.E.2d 701 (1986).

But Legislature May Authorize Cumulative Punishment. — Where the legislature specifically authorizes cumulative punishment under two statutes, regardless of whether those who statutes proscribe the "same" conduct, a court's task of statutory construction is at an end, and the prosecutor may seek and the trial court or jury may impose cumulative punishment under such statutes in a single trial. State v. Gardner, 315 N.C. 444, 340 S.E.2d 701 (1986).

Intent of Legislature Determines Punishment. — When a defendant is tried in a single trial for violations of two statutes that punish the same conduct, the amount of punishment allowable under the double jeopardy clause of the federal Constitution and the law of the land clause of our State Constitution is determined by the intent of the legislature. State v. Freeland, 316 N.C. 13, 340 S.E.2d 35 (1986).

Double jeopardy does not prohibit multiple punishments for the same offenses, where both are tried at the same time, and the Legislature clearly intended them to be punished separately. State v. Strohauer, 84 N.C. App. 68, 351 S.E.2d 823 (1987).

Dismissal on Jurisdiction Only. — Where the dismissal, upon defendant's motion, was based solely upon the trial court's ruling that it had no jurisdiction and was entirely unrelated to the sufficiency of evidence as to any element of the offense or to defendant's guilt or innocence, and since there was no acquittal or conviction, a retrial would not offend the constitutional protections afforded by the prohibitions against double jeopardy. State v. Priddy, 115 N.C. App. 547, 445 S.E.2d 610, cert. denied, 337 N.C. 805, 449 S.E.2d 751 (1994).

When Jeopardy Attaches. — In a nonjury criminal trial, jeopardy attaches when the court begins to hear evidence or testimony. State v. Brunson, 327 N.C. 244, 393 S.E.2d 860 (1990).

For case espousing a test that includes bad faith prosecutorial overreaching or harassment aimed at prejudicing defendant's chances for acquittal, whether in the current trial or a retrial, as a standard for prosecutorial misconduct to be applied in assessing double jeopardy claims under the Constitution of North Carolina, see State v. White, 85 N.C. App. 81, 354 S.E.2d 324 (1987), aff'd, 322 N.C. 506, 369 S.E.2d 813 (1988).

Test for determining under our State Constitution whether a case may be retried after the court grants a defendant's motion for a mistrial is as follows: If a defendant moves for a mistrial, he or she normally should be held to have waived the right not to be tried a second time for the same offense. Where the defendant makes such a motion because of prosecutorial misconduct, and the court grants the motion, retrial is not barred by this section unless the defendant shows that the prosecutor was motivated by the intent to provoke a mistrial instead of merely the intent to prejudice the defendant. State v. White, 322 N.C. 506, 369 S.E.2d 813 (1988).

Double Jeopardy Shown in Capital Case. — Where the initial declaration of a mistrial during the defendant's first trial on the capital charge against her was not the result of manifest necessity, and therefore was error, and it could not be determined from the record whether the error in initially declaring a mistrial caused the jury to fail to reach agreement after the court had reinstated the jury, and thus deprived the defendant of a verdict, the trial court erred when it later denied the defendant's motion to dismiss the charge of murder in the first degree against her for the reason that she had formerly been placed in jeopardy for the same offense. State v. Lachat, 317 N.C. 73, 343 S.E.2d 872 (1986).

Defendant's failure to object to termination of her first trial for capital murder by a declaration of mistrial would not prevent her from receiving the relief to which she was otherwise entitled on grounds of former jeopardy, on appeal of her conviction at a second trial. State v. Lachat, 317 N.C. 73, 343 S.E.2d 872 (1986).

Conviction Under Federal Statute With Sanctions Under State Statute Held Not Double Jeopardy. — A conviction under a federal statute followed by disciplinary sanctions pursuant to a State statute for the same conduct does not violate the double jeopardy clause. In re Cobb, 102 N.C. App. 466, 402 S.E.2d 475, cert. denied, appeal dismissed, 329 N.C. 269, 407 S.E.2d 832 (1991).

Reinstatement of a guilty plea following correction of an error of law did not violate the principles of double jeopardy. State v. Oakley, 75 N.C. App. 99, 330 S.E.2d 59 (1985).

Prosecutorial Misconduct Intended to Provoke Motion for Mistrial. — Where the former trial is terminated by a mistrial granted at the request of, or with the consent of, the defendant, the general rule is that the double jeopardy clause does not bar retrial, even if the defendant's motion for mistrial is made as a result of prosecutorial error; however, where the prosecutorial misconduct giving rise to the defendant's motion for mistrial is intended to goad or provoke the defendant into moving for a mistrial, the defendant may invoke the protection of the double jeopardy clause to bar a retrial. State v. Major, 84 N.C. App. 421, 352 S.E.2d 862 (1987).

Double Jeopardy Not Shown. — Defendant's convictions of two violations of § 14-27.7, engaging in a sexual act and in intercourse with a person over whom his employer had custody, following his earlier acquittal of second degree rape under § 14-27.3 and committing a sex act on a person who was physically helpless under § 14-27.5 and vacation of his conviction of engaging in a sex act by force and against victim's will in violation of § 14-27.5 did not violate the double jeopardy clauses of U.S. Const., Amend. V and this section of the North Carolina Constitution, as the offenses that defendant was convicted of were not lesser included offenses of the crimes that he was earlier tried for. State v. Raines, 81 N.C. App. 299, 344 S.E.2d 138 (1986), aff'd, 319 N.C. 258, 354 S.E.2d 486 (1987).

Defendant who was convicted for robbing a bank in this State of $6,058.00 with a dangerous weapon in violation of 18 U.S.C. § 2113(d) was not entitled to dismissal of an indictment in the Superior Court of Perquimans County for committing the same robbery with a dangerous weapon in violation of § 14-87 on double jeopardy grounds, as defendant was not being prosecuted for the "same offense" as he had been punished for in federal court. State v. Myers, 82 N.C. App. 299, 346 S.E.2d 273 (1986).

Convictions of statutory rape, taking indecent liberties with a child, and incest, all arising out of the same transaction, did not violate the defendant's rights against double jeopardy; the three are legally separate and distinct crimes, none of which is a lesser included offense of another. State v. Etheridge, 319 N.C. 34, 352 S.E.2d 673 (1987).

The crime against nature, taking indecent liberties with a child, and sexual offense in the second degree are legally separate and distinct crimes, and convictions for all three crimes arising out of the same transaction did not place the defendant in double jeopardy. State v. Etheridge, 319 N.C. 34, 352 S.E.2d 673 (1987).

Defendant held to have failed to establish his double jeopardy claim under the State Constitution based on prosecutorial misconduct resulting in his request for a mistrial, where it could not be said that the State's case was going so badly and the prejudice resulting from the prosecutor's conduct was so grave that the defendant's choice to continue or to abort the proceedings was rendered unmeaningful. State v. White, 85 N.C. App. 81, 354 S.E.2d 324 (1987), aff'd, 322 N.C. 506, 369 S.E.2d 813 (1988).

Trial court did not err by permitting State to try defendant for both burglary and first degree murder of victim; although the intended felony for the burglary was murder of the victim; since at least one essential element of each crime was not an element of the other, there was no merit in defendant's contentions that he was subjected to double jeopardy. State v. Parks, 324 N.C. 94, 376 S.E.2d 4 (1989).

Prosecution on two counts of discharging a firearm into occupied property did not violate federal and State prohibitions against double jeopardy even though 3606 and 3608 Jonquil Street were apartments located within the same building; the facts alleged in the second count of the indictment — that the building was located at 3608 Jonquil Street and was occupied by one set of victims, would not have sustained defendant's conviction for shooting into 3606 Jonquil while that residence was occupied by another set of victims. State v. Ray, 97 N.C. App. 621, 389 S.E.2d 422 (1990).

Defendant's two convictions and punishments for trafficking in cocaine by possession and felonious possession of cocaine, based on the same contraband, do not violate the principles of double jeopardy. State v. Pipkins, 337 N.C. 431, 446 S.E.2d 360 (1994).

Convictions May Be Had for Breaking or Entering and Larceny. — The prohibitions in the United States and North Carolina Constitutions against placing a person twice in jeopardy do not prohibit, in a single trial, convictions and punishment for both breaking or entering and felony larceny based upon that breaking or entering. State v. Gardner, 315 N.C. 444, 340 S.E.2d 701 (1986).

Conviction and punishment for both felony breaking or entering and felonious larceny based upon the same breaking or entering in a single trial is not prohibited by the provisions of either the Constitution of the United States or the Constitution of North Carolina. State v. Edmondson, 316 N.C. 187, 340 S.E.2d 110 (1986).

Because the crimes of larceny and obtaining property by false pretenses are separate and distinguishable offenses, the issuance of a second indictment for false pretenses, after the dismissal of larceny charges at the close of the State's evidence, did not constitute double jeopardy. State v. Kelly, 75 N.C. App. 461, 331 S.E.2d 227, cert. denied, 315 N.C. 187, 339 S.E.2d 409 (1985).

Each Seized Item of Obscene Material a Separate Offense. — The trial court did not err by refusing to arrest judgment on defendant's two counts of disseminating obscenity, even though the films sold police were sold in the same transaction, since it was the clear intent of the legislature to treat the dissemination of each seized item of obscene material as a separate offense. State v. Von Wilds, 88 N.C. App. 69, 362 S.E.2d 605 (1987), cert. denied, 322 N.C. 329, 368 S.E.2d 873 (1988).

In this State a defendant may not

be punished both for felony murder and for the underlying "predicate" felony, even in a single prosecution. Whether in other situations multiple punishments may be imposed when a defendant, in a single trial, is convicted of multiple offenses when some are fully, factually embraced within others is to be determined on the basis of legislative intent. State v. Gardner, 315 N.C. 444, 340 S.E.2d 701 (1986).

Revocation of Driver's License Cannot Constitute Double Jeopardy. —

The ten-day driver's license revocation under G.S. 20-16.5 did not constitute punishment as such; therefore, defendant's subsequent criminal conviction for DWI did not violate the double jeopardy clause. State v. Oliver, 343 N.C. 202, 470 S.E.2d 16 (1996).

Order Denying Motion Immediately Appealable. — A defendant's right not to be unconstitutionally subjected to multiple criminal trials for the same offense is a substantial right, a violation of which cannot be fully remedied by an appeal taken after the subsequent trial has already occurred because the mere fact of the subsequent trial is a violation of the protected right; therefore, where a motion for dismissal of criminal charges is based upon double jeopardy grounds, an order denying the motion is immediately appealable. State v. Major, 84 N.C. App. 421, 352 S.E.2d 862 (1987).

D. Right to Counsel.

Right to Counsel Guaranteed. — An accused's right to counsel in a criminal prosecution is guaranteed by U.S. Const., Amend. VI and is applicable to the states through U.S. Const., Amend. XIV, N.C. Const., Art. I, § 23 and this section. State v. Shores, 102 N.C. App. 473, 402 S.E.2d 162 (1991).

Test of effective assistance of counsel, etc. —

In accord with first paragraph in the main volume. See State v. Scober, 74 N.C. App. 469, 328 S.E.2d 590 (1985).

For case upholding finding that defendant's counsel was not ineffective but if he was, the defendant did not show prejudice, see State v. Swann, 322 N.C. 666, 370 S.E.2d 533 (1988).

Illustrative Cases. —

The counsel's substandard performance was prejudicial to the rape defendant where the defense's failure to produce any evidence to support the theories proffered at the outset of the trial, including consent of the victim and inability of the defendant to perform the alleged acts, formed the basis of one of the principal closing arguments made by the State in favor of conviction. State v. Moorman, 320 N.C. 387, 358 S.E.2d 502 (1987).

E. Time to Prepare Defense.

Delay Forced by Defendant. — There was no constitutional violation where defendant clearly had ample time to confer with counsel, investigate, and present his defense. Defendant may not force a delay in proceedings by retaining counsel and refusing to agree to a fee arrangement. State v. Cuevas, 121 N.C. App. 553, 468 S.E.2d 425 (1996).

Defendant Offered Insufficient Evidence. — The circumstances surrounding the trial court's denial of the defendant's motion to continue did not demonstrate that it was unlikely that the defendant could have received effective assistance of counsel. The defendant failed to offer evidence tending to establish a violation of his constitutional right to a reasonable time to investigate, prepare and present his defense for murder charge and did not show that he had inadequate time to confer with counsel or that counsel had inadequate time to prepare for trial. State v. Tunstall, 334 N.C. 320, 432 S.E.2d 331 (1993).

Illustrative Cases. —

Where defendant made no credible demonstration that a continuance would have enabled him to secure his psychiatrist's attendance, the judge did not err, nor did he abuse his discretion, by refusing to grant a continuance, and even had the judge's denial of the motion been erroneous constitutionally, defendant failed to demonstrate prejudice. State v. Attmore, 92 N.C. App. 385, 374 S.E.2d 649 (1988), cert. denied, 324 N.C. 248, 377 S.E.2d 757 (1989).

F. Witnesses.

Section Preserves, etc. —

The "law of the land" guaranteed by this section is synonymous with "due process," and it preserves the right of confrontation and cross-examination to an accused party. State v. Phillips, 88 N.C. App. 526, 364 S.E.2d 196 (1988), rev'd on other grounds, 325 N.C. 222, 381 S.E.2d 325 (1989).

Defendant Failed to Show His Right to the Aid of a Pathologist. —

Even though defendant's identity as the perpetrator of the crime charged was critical, and the state's case was built on circumstantial evidence, defendant had not demonstrated that a pathologist could have offered anything to his defense where the assistance of the pathologist sought by defendant would have been of little, if any, value to him, and defendant failed to satisfy his burden of showing either that the assistance of a pathologist would have materially aided him in the preparation of his defense or that the lack thereof deprived him of a fair trial. State v. Moseley, 338 N.C. 1, 449 S.E.2d 412 (1994), cert. denied, — U.S. —, 115 S. Ct. 1815, 131 L. Ed. 2d 738 (1995).

Victim impact statements may be used at sentencing hearings, except in capital cases. State v. Phillips, 325 N.C. 222, 381 S.E.2d 325 (1989).

Use of Closed Circuit Television in Court Room Held Adequate to Provide Defendant Opportunity to Cross-examine Child Victim. — Where, in prosecution for taking indecent liberties with a four-year-old child, during voir dire hearing as to victim's competency as a witness, defendant, although absent from the courtroom, was able to hear all testimony, interact freely with his attorney, and through his attorney confront the victim, thereby accomplishing effective cross-examination, the exclusion of defendant did not violate this section or N.C. Const., Art. I, §§ 18 or 23, as the trial court's use of a closed circuit television and its act of providing defendant and his attorney adequate opportunity to communicate during the victim's testimony were sufficient to permit defendant to hear the evidence and to refute it. State v. Jones, 89 N.C. App. 584, 367 S.E.2d 139 (1988).

Illustrative Cases. — Where defendant had the opportunity to cross-examine both witnesses in his murder trial, the confrontation clause was not violated as to the victim's grandmother's testimony concerning what she told the defendant and as to the letter written from the victim to the defendant, authenticated by two witnesses. State v. Quick, 323 N.C. 675, 375 S.E.2d 156 (1989).

H. Self-Incrimination.

Exclusion of Second Confession after Improper First Confession. — Neither this section nor § 23 of N.C. Const., Art. I required the suppression of a defendant's second confession, made after proper warnings and the defendant's voluntary waiver of his constitutional rights, when that confession followed an earlier confession which had to be excluded under Miranda v. Arizona, 384 U.S. 436, 86 S. Ct. 1602, 16 L. Ed. 2d 694 (1966). State v. Hicks, 333 N.C. 467, 428 S.E.2d 167 (1993).

I. Restraint of Defendant at Trial.

There is no ban, constitutional or otherwise, against physical restraint in the courtroom per se. What is forbidden by the due process and fair trial guarantees of U.S. Const., Amend. XIV and this section of the North Carolina Constitution is physical restraint that improperly deprives a defendant of a fair trial. State v. Wright, 82 N.C. App. 450, 346 S.E.2d 510 (1986).

A defendant may be physically restrained during his trial when restraint is necessary to maintain order, prevent the defendant's escape, or protect the public. State v. Wright, 82 N.C. App. 450, 346 S.E.2d 510 (1986).

J. Punishment.

Death Penalty. — The North Carolina Supreme Court reaffirmed its position that the North Carolina death penalty statute does not violate the U.S. Const., Amends. VIII and XIV and the N.C. Const., Art. I, § 27 and this section. State v. McHone, 334 N.C. 627, 435 S.E.2d 296 (1993), cert. denied, — U.S. —, 114 S. Ct. 1577, 128 L. Ed. 2d 220 (1994).

Imposition of a 30-year sentence for a habitual felon who under the facts could have received a maximum sentence of life imprisonment under § 14-1.1 is within constitutional limits and does not constitute cruel and unusual punishment. State v. Aldridge, 76 N.C. App. 638, 334 S.E.2d 107 (1985).

General statistical studies of the operation of the death penalty showing that a person is more likely to be executed if the murder victim is white and the chance is more likely yet if the defendant is black, could not be used by defendant to show a violation of his rights under U.S. Const., Amends. VIII and XIV or under this section. State v. Green, 329 N.C. 686, 406 S.E.2d 852 (1991).

VI. POLICE POWER.

This section and N.C. Const., Art. I, § 1 permit the State, through the exercise of its police power, to regu-

late economic enterprises, provided the regulation is rationally related to a proper governmental purpose. This is the test used in determining the validity of state regulation of business under N.C. Const., Art. I, §§ 1 and 19. Poor Richard's, Inc. v. Stone, 322 N.C. 61, 366 S.E.2d 697 (1988).

Legislature may make the doing of an act a criminal offense. — As a matter of both State and federal constitutional law, legislatures may make the doing of an act a criminal offense even in the absence of criminal intent. State v. Smith, 90 N.C. App. 161, 368 S.E.2d 33 (1988), aff'd, 323 N.C. 703, 374 S.E.2d 866, cert. denied, 490 U.S. 1100, 109 S. Ct. 2453, 104 L. Ed. 2d 1007 (1989).

Limitations on Use of Private Property. —

The "vested rights" doctrine has evolved as a constitutional limitation on the State's exercise of its police power to restrict an individual's use of private property by the enactment of zoning ordinances; the doctrine is rooted in the "due process of law" and the "law of the land" clauses of the federal and State Constitutions. Godfrey v. Zoning Bd. of Adjustment, 317 N.C. 51, 344 S.E.2d 272 (1986).

VII. TAKING OF PRIVATE PROPERTY FOR PUBLIC USE.

A. In General.

Conclusive Presumption of Statute Deprives Property Owner of Due Process. — The first sentence of subsection (b) of § 1-44.2 that provides that persons claiming contrary to the presumption of subsection (a) must bring a lawsuit within one year of the enactment of the statute or the abandonment of the easement, whichever occurs later, or lose their right to rebut the presumption, turns a rebuttable presumption into a conclusive presumption which effectively takes a defendants' property without affording notice, an opportunity to be heard and just compensation. McDonald's Corp. v. Dwyer, 338 N.C. 445, 450 S.E.2d 888 (1994).

Test to Determine Whether Taking Has Occurred. — The test to determine whether a taking of private property for public use has occurred involves as two-part analysis. An "ends-means" test is applied to decide whether that particular exercise of the police power was legitimate, by determining whether the ends sought, i.e., the object of the legislation, is within the scope of the power, and then whether the means chosen to regulate are reasonable. Finch v. City of Durham, 325 N.C. 352, 384 S.E.2d 8, rehearing denied, 325 N.C. 714, 388 S.E.2d 452 (1989).

The test for determining whether a taking has occurred in the context of a rezoning is whether the property as rezoned has a practical use and a reasonable value. Finch v. City of Durham, 325 N.C. 352, 384 S.E.2d 8, rehearing denied, 325 N.C. 714, 388 S.E.2d 452 (1989).

Zoning restrictions on property may be so strict as to amount to a taking of that property. However, for there to be such a "taking," the restriction must deprive the owner of virtually all the beneficial uses of his land. Sherrill v. Town of Wrightsville Beach, 81 N.C. App. 369, 344 S.E.2d 357, cert. denied and appeal dismissed, 318 N.C. 417, 349 S.E.2d 600 (1986).

Deprivation of Previously Available Property Rights. — A taking does not occur simply because government action deprives an owner of previously available property rights. Finch v. City of Durham, 325 N.C. 352, 384 S.E.2d 8, rehearing denied, 325 N.C. 714, 388 S.E.2d 452 (1989).

Riparian rights are vested property rights that cannot be taken for private purposes or taken for public purposes without compensating the owner, and they arise out of ownership of land bounded or traversed by navigable water. In re Mason ex rel. Huber, 78 N.C. App. 16, 337 S.E.2d 99 (1985), cert. denied, 315 N.C. 588, 341 S.E.2d 27 (1986).

Lease for shellfish cultivation issued under § 113-202 did not infringe upon riparian rights of landowner. In re Mason ex rel. Huber, 78 N.C. App. 16, 337 S.E.2d 99 (1985), cert. denied, 315 N.C. 588, 341 S.E.2d 27 (1986).

C. Compensation.

As Part of the Law of the Land. —

In accord with first paragraph in the main volume. See Finch v. City of Durham, 325 N.C. 352, 384 S.E.2d 8, rehearing denied, 325 N.C. 714, 388 S.E.2d 452 (1989).

While N.C. Const., Art. I, § 19 does not expressly prohibit taking property without compensation, this right is nevertheless considered a part of the "law of the land" under the amendment. Armstrong v. Armstrong, 85 N.C. App.

93, 354 S.E.2d 350, rev'd on other grounds, 322 N.C. 396, 368 S.E.2d 595 (1988).

Damages for Delay in Payment. — When the taking of property by the State precedes the payment of compensation, the owner is entitled to additional compensation for the delay in payment. This section and U.S. Const., Amends. V and XIV require this additional payment as a part of just compensation. The additional sum awarded for delay in payment of the value for the property taken is not interest eo nomine, but interest is a fair means for measuring the amount to be arrived at of such additional sums. Lea Co. v. North Carolina Bd. of Transp., 317 N.C. 254, 345 S.E.2d 355 (1986), aff'd, 323 N.C. 697, 374 S.E.2d 866, cert. denied, 490 U.S. 1100, 109 S. Ct. 2453, 104 L. Ed. 2d 1007 (1989).

Property owner's actual investment in property prior to rezoning is not determinative of practical use and reasonable value of the property after rezoning. Finch v. City of Durham, 325 N.C. 352, 384 S.E.2d 8, rehearing denied, 325 N.C. 714, 388 S.E.2d 452 (1989).

E. Illustrative Cases.

State Regulation of Public Streets and Beaches. — Session Laws 1983, Chapter 539 (former § 113A-134.10), which, inter alia, prohibited motor vehicle traffic over a vehicular access ramp and right-of-way constructed by a town to provide access to the beach did not constitute a taking in violation of this Article, since the State has paramount legislature authority to regulate the use and control of public streets and beaches. Town of Emerald Isle ex rel. Smith v. State, 320 N.C. 640, 360 S.E.2d 756 (1987).

PCB Disposal Facility. — Plaintiff landowners failed to demonstrate that they were entitled to recover based upon inverse condemnation on account of the State's location and operation of a PCB disposal facility, the buffer zone to which was adjacent to their land. Twitty v. State, 85 N.C. App. 42, 354 S.E.2d 296, cert. denied, 320 N.C. 177, 358 S.E.2d 69 (1987).

Five-year amortization provisions of county ordinance regulating off-premises signs of over 15 square feet were sufficient, and the ordinance did not constitute a taking of plaintiff's property without compensation. Summey Outdoor Adv., Inc. v. County of Henderson, 96 N.C. App. 533, 386 S.E.2d 439 (1989).

Denial of a project application for preliminary plat approval which would violate the valid condition of a previously approved and substantially undertaken proposal worked no taking of a three-acre area at issue. River Birch Assocs. v. City of Raleigh, 326 N.C. 100, 388 S.E.2d 538 (1990).

A requirement of dedication of park space for subdivision approval does not necessarily constitute a taking. Where the subdivider creates the specific need for parks, it is not unreasonable to charge the subdivider with the burden of providing them. River Birch Assocs. v. City of Raleigh, 326 N.C. 100, 388 S.E.2d 538 (1990).

Application of § 105-116 to Electric Cooperative. — Section 105-116 taxes billings for electrical service rendered by cooperatives in the same manner as billings for service rendered by investor-owned utilities; therefore, application of that section to electric cooperative did not violate that entity's rights under this section or N.C. Const., Art. V, §§ 2 and 3. Four County Elec. Membership Corp. v. Powers, 96 N.C. App. 417, 386 S.E.2d 107 (1989), cert. denied and appeal dismissed, 326 N.C. 799, 393 S.E.2d 894 (1990), cert. denied, 498 U.S. 1040, 111 S. Ct. 711, 112 L. Ed. 2d 700 (1991).

The capture of supplier refunds for the purpose of funding the expansion fund did not constitute a taking without compensation in violation of the Fifth and Fourteenth Amendments to the United States Constitution and the "law of the land" clause of N.C. Const., Art. I, § 19. State ex rel. Utils. Comm'n v. Carolina Util. Customers Ass'n, 336 N.C. 657, 446 S.E.2d 332 (1994).

Insurance Claim Files. — There was no compensable taking of plaintiff's property where, in order to facilitate the processing of claims made under policies issued by insolvent insurer, association requested the commissioner to obtain access to plaintiff's claim files. Eastern Appraisal Servs., Inc. v. State, 118 N.C. App. 692, 457 S.E.2d 312, appeal dismissed, cert. denied, 341 N.C. 648, 462 S.E.2d 509 (1995).

VIII. TAXATION.

Statute Held Valid. — The distinction between "homes for the aged, sick, or infirm" and individual residential property owners under § 105-275(32) is not unconstitutional under the equal protection clause. In re Barbour, 112 N.C. App. 368, 436 S.E.2d 169 (1993).

IX. MISCELLANEOUS RIGHTS.

Equal access to participation in the public school system.

Action for declaratory and injunctive relief brought by minors who were, or would be in the future, enrolled in public schools in the county, and their parents or legal guardians, alleging that the present statutory system of financing public schools in this State resulted in inequities in educational programs and facilities between the public schools within that county, which had a relatively low tax base from which to draw funds, and those in other counties with relatively high tax bases, and that the operation of five separate school systems in that county prohibited effective use of facilities and staff and promoted inequitable use of state and local funds, thus depriving them of equal opportunity to a free public school education in violation of this section, N.C. Const., Art. I, §§ 1 and 15, and Art. IX, § 2(1), failed to allege facts entitling them to relief or conferring jurisdiction on the courts of this State. Britt v. North Carolina State Bd. of Educ., 86 N.C. 282, 357 S.E.2d 432, appeal dismissed, 320 N.C. 790, 361 S.E.2d 71 (1987).

Educational Opportunities. — Where the court found there was no constitutional fundamental right to adequate educational opportunities, plaintiff's equal protection and due process claims based on this asserted fundamental right failed. Leandro v. State, 122 N.C. App. 1, 468 S.E.2d 543 (1996).

Same — Suspension. — The availability of prompt postsuspension review, along with a relatively brief suspension period, reduces the weight of the private interest in a suspended attorney's continued use of his or her law license pending the outcome of the postsuspension hearing. In re Lamm, 116 N.C. App. 382, 448 S.E.2d 125 (1994), aff'd, 341 N.C. 196, 458 S.E.2d 921 (1995).

The procedure contained in this rule, provides for independent judicial review by a superior court judge, who must determine if the affidavits and petition establish a sufficient showing to justify a suspension and this procedure satisfies the requirements for sufficient process under the Law of the Land Clause of the North Carolina Constitution. In re Lamm, 116 N.C. App. 382, 448 S.E.2d 125 (1994), aff'd, 341 N.C. 196, 458 S.E.2d 921 (1995).

Vested Rights in Pre-1983 Estates by the Entirety. — The claim of a vested property right may not rest upon state enforcement of common law which is unconstitutionally discriminatory. Thus, to the extent that defendant husband's claims to the exclusive right to the control and income of pre-1983 estates by the entirety were based solely upon common-law incidents of the tenancy, they would fail, as the right recognized by the common law could not be said to be a "vested property right." Perry v. Perry, 80 N.C. App. 169, 341 S.E.2d 53, appeal dismissed, 320 N.C. 170, 357 S.E.2d 925 (1987). See § 39-13.6.

X. CHALLENGES TO STATUTES, ETC., ON CONSTITUTIONAL GROUNDS.

Separate Classifications. — Under the state and federal equal protection clauses, a state statute or regulation which has the effect of creating separate classifications preferring one group over another must be rationally related to legitimate state interest(s). Harris v. Flaherty, 90 N.C. App. 110, 367 S.E.2d 364 (1988).

No Vested Right in Continuation of an Existing Law. — The fact that husband acquired property during marriage but prior to the effective date of the Equitable Distribution Act does not mean that he also acquired a vested right in the law governing the disposition of property upon divorce which was in effect either at the time the property was acquired or at the time of his marriage. There is no such thing as a vested right in the continuation of an existing law. Armstrong v. Armstrong, 322 N.C. 396, 368 S.E.2d 595 (1988).

XI. ILLUSTRATIVE CASES.

A. Statutes, Proceedings, etc., Upheld.

Annexation. — It is not a denial of the equal protection of the law for a city to annex land without annexing other land similarly situated. Piedmont Ford Truck Sale, Inc. v. City of Greensboro, 324 N.C. 499, 380 S.E.2d 107 (1989).

Ballot Access Restriction. — The ten percent (10%) numerical signature requirement contained in § 163-122(a)(3) is an unconstitutional ballot access restriction for unaffiliated candidates in violation of the U.S Const., Amend. I and XIV and N.C. Const., Art. I, § 10 and this section. Obie v. North Carolina State Bd. of Elections, 762 F. Supp. 119 (E.D.N.C. 1991).

Section 53-229, relating to the acquisition and control of certain nonbank banking institutions, does not violate the commerce clause of the U.S. Constitution, nor the equal protection, exclusion emoluments and antimonopoly provisions of N.C. Const., Art. I, §§ 19, 32 and 34. Citicorp v. Currie, 75 N.C. App. 312, 330 S.E.2d 635, cert. denied and appeal dismissed, 314 N.C. 538, 335 S.E.2d 15, 16 (1985).

Conditions for licenses to operate bingo games set out in §§ 14-309.7 and 14-309.8 are reasonably related to a legitimate interest that bingo games not be operated by full-time professionals for profit. Durham Council of Blind v. Edmisten, 79 N.C. App. 156, 339 S.E.2d 84, cert. denied and appeal dismissed, 316 N.C. 552, 344 S.E.2d 5 (1986).

A city ordinance providing for conveyance of open space to an association of home owners living within the subdivision is reasonably related to the purpose of preserving urban open space so as to withstand a challenge under this section. River Birch Assocs. v. City of Raleigh, 326 N.C. 100, 388 S.E.2d 538 (1990).

Criminal Statutes. —

For a discussion of the constitutionality of § 20-141.4(a2), relating to misdemeanor death by vehicle, see State v. Smith, 90 N.C. App. 161, 368 S.E.2d 33 (1988), aff'd, 323 N.C. 703, 374 S.E.2d 866, cert. denied, 490 U.S. 1100, 109 S. Ct. 2453, 104 L. Ed. 2d 1007 (1989).

Drug Testing. — Plaintiff's duties consisted of generally performing preventative maintenance and repairs on airport terminal air conditioning and ventilating and heating systems, but plaintiff also had security clearance to drive a motor vehicle 10 M.P.H. in a designated area on the apron of the flight area in order to get access to the systems located on the outside of the building. Plaintiff, if drug-impaired while operating a motor vehicle on the apron of the flight area, could increase the risk of harm to others. Accordingly, a drug testing policy implemented by defendants (employer) was constitutional. Boesche v. Raleigh-Durham Airport Auth., 111 N.C. App. 149, 432 S.E.2d 137, cert. granted, 334 N.C. 687, 436 S.E.2d 370 (1993).

Provisions of the Uniform Reciprocal Enforcement of Support Act. — Former sections 52A-29 and 52A-30 comport with the due process requirements of the federal and State Constitutions. Allsup v. Allsup, 323 N.C. 603, 374 S.E.2d 237 (1988).

Eviction Proceedings. — An eviction proceeding in a North Carolina state court pursuant to the North Carolina eviction statute will provide the tenant with all the process that is due. Roanoke Chowan Regional Hous. Auth. v. Vaughan, 81 N.C. App. 354, 344 S.E.2d 578, cert. denied, 317 N.C. 706, 347 S.E.2d 439 (1986).

Interest. —

Section 24-5 does not violate the equal protection clause of U.S. Const., Amend. XIV or this section. Powe v. Odell, 312 N.C. 410, 322 S.E.2d 762 (1984).

Section 24-5, relating to the imposition of interest, does not violate N.C. Const., Art. I, §§ 19 and 32 and the equal protection and due process clauses of U.S. Const., Amend. XIV. Harris v. Scotland Neck Rescue Squad, Inc., 75 N.C. App. 444, 331 S.E.2d 695, cert. denied, 314 N.C. 329, 333 S.E.2d 486 (1985).

Limitation Statutes. —

Sections 1-50(5) (now 1-50(a)(5)) and 1-15(c) are not unconstitutional as being violative of the open courts provision of the North Carolina Constitution and the equal protection clauses of the State and federal Constitutions. Square D Co. v. C.J. Kern Contractors, 314 N.C. 423, 334 S.E.2d 63 (1985).

Section 1-50 does not distinguish between manufacturers and retail sellers of products who are protected from liability beyond the six-year period of repose and does not violate the equal protection clauses or the State or federal Constitutions. Tetterton v. Long Mfg. Co., 314 N.C. 44, 332 S.E.2d 67 (1985).

Section 24-5, relating to the imposition of interest, does not violate this section, the Equal Protection and Due Process Clauses of U.S. Const., Amend. XIV, or the exclusive emoluments clause contained in N.C. Const., Art. I, § 32. Lowe v. Tarble, 312 N.C. 467, 323 S.E.2d 19 (1984), rehearing granted, 313 N.C. 176, 326 S.E.2d 32, aff'd on rehearing, 313 N.C. 460, 329 S.E.2d 648 (1985).

Section 24-5 does not violate the equal protection clause of U.S. Const., Amend. XIV or this section. Powe v. Odell, 312 N.C. 410, 322 S.E.2d 762 (1984).

Section 24-5, relating to the imposition of interest, does not violate Art. I, §§ 19 and 32 of the North Carolina Constitution and the equal protection and due process clauses of U.S. Const., Amend.

XIV. Harris v. Scotland Neck Rescue Squad, Inc., 75 N.C. App. 444, 331 S.E.2d 695, cert. denied, 314 N.C. 329, 333 S.E.2d 486 (1985).

Article 1, Chapter 127B, regulating businesses dealing in military goods, is constitutional under the due process and equal protection provisions of the State and federal Constitutions. Poor Richard's, Inc. v. Stone, 322 N.C. 61, 366 S.E.2d 697 (1988).

The provisions of § 127B-1 are not unreasonably burdensome within the meaning of this section and N.C. Const., Art. I, § 1. Poor Richard's, Inc. v. Stone, 322 N.C. 61, 366 S.E.2d 697 (1988).

The classification created by § 127B-1 is not so arbitrary or unreasonable as to be violative of the equal protection requirement. Poor Richard's, Inc. v. Stone, 322 N.C. 61, 366 S.E.2d 697 (1988).

State's failure to take and to preserve an additional breath sample for independent testing by defendant or to produce the control and test ampules for defendant's breathalyzer examination did not violate state or federal due process. State v. Jones, 106 N.C. App. 214, 415 S.E.2d 774 (1992).

Obscenity. — Where, in an obscenity trial, the trial judge declined to judicially restrict or expand the term "community," permitting the jurors to apply the standards of the community from which they came in much the same manner as they would determine the propensities of a reasonable person in other areas of the law, neither § 14-190.1 nor the judge's instructions contravened the Constitution by failing to specify what is meant by "community." State v. Mayes, 86 N.C. App. 569, 359 S.E.2d 30, petition allowed as to additional issues, 321 N.C. 122, 361 S.E.2d 599 (1987), aff'd, 323 N.C. 159, 371 S.E.2d 476, 488 U.S. 1009, 109 S.Ct. 792, 102 L.Ed.2d 784 (1988).

Ordinance which required escort bureaus to keep a record of transactions with clients or customers was vague and overbroad and violated this section; the sweep of the ordinance infringed on rights of association guaranteed by U.S. Const., Amend. I. Treants Enters., Inc. v. Onslow County, 94 N.C. App. 453, 380 S.E.2d 602 (1989).

A provision of a city ordinance requiring paved parking lots, challenged on due process and equal protection grounds, was held valid. Grace Baptist Church v. City of Oxford, 320 N.C. 439, 358 S.E.2d 372 (1987).

Eligibility to Receive Day-Care Benefits. — Division of Social Services' definition of "family" and the relevant eligibility criterion used in distinguishing among those eligible to receive day-care benefits intended to foster a fair meeting out of state and federal funds to promote the objectives of the social services programs and as such are rationally related to the State's legitimate objectives. Harris v. Flaherty, 90 N.C. App. 110, 367 S.E.2d 364 (1988).

The Preambles to the Ethical Principles of Psychologists are unconstitutionally vague for purposes of being cited for specific violations under U.S. Const., Amends. V and XIV and under this section of the N.C. Const. White v. North Carolina State Bd. of Exmrs. of Practicing Psychologists, 97 N.C. App. 144, 388 S.E.2d 148, appeal dismissed and cert. denied, 326 N.C. 601, 393 S.E.2d 891 (1990).

Ethical Principles of Psychologists. — Principles 1f, 2e, 3c, 3d, 5c, 7b, 8c, and 8d, are not unconstitutionally vague. White v. North Carolina State Bd. of Exmrs. of Practicing Psychologists, 97 N.C. App. 144, 388 S.E.2d 148, appeal dismissed and cert. denied, 326 N.C. 601, 393 S.E.2d 891 (1990).

B. Statutes, Proceedings, etc., Held Unconstitutional.

A county ordinance subjecting businesses which provided male or female "companionship" to various licensing requirements was held to lack any rational, real and substantial relation to any valid objective of the county and thus to offend this section and N.C. Const., Art. I, § 1. Treants Enters., Inc. v. Onslow County, 83 N.C. App. 345, 350 S.E.2d 365 (1986), aff'd, 320 N.C. 776, 360 S.E.2d 783 (1987).

An ordinance enacted to regulate business providing male and female companionship was overbroad and not rationally related to a substantial government purpose and violated our State Constitution. Treants Enters., Inc. v. Onslow County, 320 N.C. 776, 360 S.E.2d 783 (1987).

Deprivation of Property. — The first sentence of subsection (b) of § 1-44.2 is unconstitutional because it does not provide sufficient notice, an opportunity to be heard, and just compensation before divesting owner of a valuable property interest. The remaining portions of that section were not challenged and remain in full force and effect. McDonald's Corp. v. Dwyer, 338 N.C. 445, 450 S.E.2d 888 (1994).

Sec. 20. General warrants.

Legal Periodicals. —

For note on warrantless aerial surveillance endorsed in California v. Ciraolo, 476 U.S. 207, 106 S. Ct. 1809, 90 L. Ed. 2d 210, rehearing denied, 478 U.S. 1014, 106 S. Ct. 3320, 92 L. Ed. 2d 728 (1986), see 9 Campbell L. Rev. 497 (1987).

For note, "North Carolina Adopts the Inevitable Discovery Exception to the Exclusionary Rule: — State v. Garner," see 15 Campbell L. Rev. 305 (1993).

CASE NOTES

I. General Consideration.
II. Warrantless Searches.
III. Search Warrants.

I. GENERAL CONSIDERATION.

Fourth Amendment Search and Seizure, etc. —

Pointing to the differences in language in the Fourth Amendment of the United States Constitution and this section of the North Carolina Constitution, the North Carolina Constitution is more protective of a person's privacy and requires a stricter standard in justifying a warrantless search. State v. Mills, 104 N.C. App. 724, 411 S.E.2d 193 (1991).

The language of this section differs markedly from the language of U.S. Const., Amend. IV. Nevertheless, this section prohibits unreasonable searches and seizures. State v. Arrington, 311 N.C. 633, 319 S.E.2d 254 (1984).

Standing to Object to Search. — Burglary defendant had no standing to object to the search of a car from which evidence was taken by the FBI where, although defendant had paid $3,500 of the $4,000 purchase price, the owner of the car dealership retained title and had given his consent to the search. State v. Mandina, 91 N.C. App. 686, 373 S.E.2d 155 (1988).

Defendant did not have standing to contend that the search and seizure of a briefcase and its contents violated his rights under the Fourth Amendment to the United States Constitution and § 20 of the North Carolina Constitution, where the defendant presented no evidence that he asserted any ownership or possessory interest in the briefcase. State v. Cohen, 117 N.C. App. 265, 450 S.E.2d 503 (1994).

Stop and Frisk Procedure. — Action of law enforcement agents who entered lounge pursuant to a valid search warrant and frisked defendant for weapons was not unconstitutional, since the North Carolina Supreme Court has upheld the "stop and frisk" procedure, and since there is a specific grant of authority in § 15A-255. State v. Davis, 94 N.C. App. 358, 380 S.E.2d 378 (1989).

It is well within the law to conduct a frisk of a defendant for weapons when strictly limited to a determination of whether defendant was armed. State v. Harris, 95 N.C. App. 691, 384 S.E.2d 50 (1989), aff'd, 326 N.C. 588, 391 S.E.2d 187 (1990).

For case refusing to adopt a "good faith" exception to the exclusionary rule, see State v. Carter, 322 N.C. 709, 370 S.E.2d 553 (1988).

Applied in State v. Kornegay, 313 N.C. 1, 326 S.E.2d 881 (1985); State v. Bromfield, 332 N.C. 24, 418 S.E.2d 491 (1992).

Cited in State v. Melvin, 86 N.C. App. 291, 357 S.E.2d 379 (1987); State v. Autry, 321 N.C. 392, 364 S.E.2d 341 (1988); State v. Davis, 96 N.C. App. 545, 386 S.E.2d 743 (1989); State v. Sanders, 327 N.C. 319, 395 S.E.2d 412 (1990); State v. Butler, 331 N.C. 227, 415 S.E.2d 719 (1992); State v. Farmer, 333 N.C. 172, 424 S.E.2d 120 (1993); Boesche v. Raleigh-Durham Airport Auth., 111 N.C. App. 149, 432 S.E.2d 137 (1993); State v. West, 119 N.C. App. 562, 459 S.E.2d 55 (1995); State v. Clyburn, 120 N.C. App. 377, 462 S.E.2d 538 (1995).

II. WARRANTLESS SEARCHES.

Suspicion of Impairment Held Reasonable. — Despite lack of an observed and verifiable traffic code violation by suspect, his driving 20 miles per hour below the speed limit and weaving within his lane were actions sufficient to raise a suspicion of an impaired driver in a reasonable and experienced trooper's mind. State v. Jones, 96 N.C. App. 389, 386 S.E.2d 217 (1989), appeal dismissed, 326 N.C. 366, 389 S.E.2d 809 (1990).

Blood Test on Unconscious Defendant. — In a prosecution for involuntary manslaughter and driving under the influence, the performance of a blood alcohol test on blood seized from an unconscious defendant pursuant to § 20-16.2(b) did not violate defendant's rights under the U.S. Constitution and this section, because of (1) the existence of probable cause to arrest; (2) the limited nature of the intrusion upon the person; and (3) the destructibility of the evidence. State v. Hollingsworth, 77 N.C. App. 36, 334 S.E.2d 463 (1985).

Limitations on Pat-Down Search. — Although a police officer was justified in conducting a limited pat-down of the defendant to determine whether the defendant was armed, once the officer concluded that there was no weapon, he could not continue to search or question the defendant in order to ascertain whether a rolled up plastic bag was contraband. State v. Beveridge, 112 N.C. App. 688, 436 S.E.2d 912 (1993), cert. denied, 335 N.C. 560, 441 S.E.2d 105, aff'd per curiam, 336 N.C. 601, 444 S.E.2d 223 (1994).

Validity of Search Where Driver Not Charged with Offense. — Fact that driver was not charged thereafter with a DUI offense was not relevant to the trooper's initial suspicions; therefore, stop and search of car was valid. State v. Jones, 96 N.C. App. 389, 386 S.E.2d 217 (1989), appeal dismissed, 326 N.C. 366, 389 S.E.2d 809 (1990).

Results Not Suppressed Though State Line Crossed. — Neither the federal nor State Constitutions required that evidence of patrolman's detection of alcohol on defendant's breath and the results of a breathalyzer test given him by a Surry County deputy sheriff be suppressed where the arresting officer did not know that defendant crossed the state line into Virginia before stopping his truck. State v. Gwyn, 103 N.C. App. 369, 406 S.E.2d 145, cert. denied, 330 N.C. 199, 410 S.E.2d 498 (1991).

No Legitimate Expectation of Privacy in Conversation with Confederate. — Pre-arrest warrantless recording of defendant's incriminating statements through witness did not violate defendant's right to be free of unreasonable search and seizure under this section, inasmuch as defendant had no legitimate expectation of privacy regarding a conversation he voluntarily maintained with a confederate, did not violate defendant's right under N.C. Const., Art. I, § 23, to be free from compulsory self-incrimination because his participation in the conversation was wholly voluntary, albeit ill-advised, and did not violate defendant's right under N.C. Const., Art. I, § 23, to counsel because the conversation in question occurred during the initial investigation of defendant prior to his arrest. State v. Levan, 326 N.C. 155, 388 S.E.2d 429 (1990).

Defendant did not have reasonable expectation of privacy within his jail cell and search during which a letter defendant had written to his brother, asking the brother to commit perjury at his trial, was seized was proper. State v. Martin, 322 N.C. 229, 367 S.E.2d 618 (1988).

Warrantless Search Upheld. —

It was not unreasonable for authorities to strip defendant and comb through his pubic without search warrant after arresting him for first degree sexual assault, kidnapping and sodomy. Arrest was supported by probable cause and evidence could easily have been concealed or destroyed. State v. Norman, 100 N.C. App. 660, 397 S.E.2d 647 (1990).

Where the search involved a motor vehicle in a public area, the only determination left for review was whether deputy had probable cause to search the van; the trial court found as facts that deputy was sufficiently experienced to make a reliable determination that what he smelled was illegal contraband (white liquor), defendant appeared to deputy to be very nervous, and defendant had placed cardboard over a burned-out window on the van after a tire had caught fire; therefore deputy had reasonable grounds to conclude that the van contained contraband, and that he did not need a warrant to search. State v. Corpening, 109 N.C. App. 586, 427 S.E.2d 892 (1993).

There was reasonable suspicion to justify officer's search of defendant based on a telephone tip and the officer's observations of defendant. In re Whitley, 122 N.C. App. 290, 468 S.E.2d 610 (1996).

Where the incriminating evidence seized was immediately apparent to the officer, the cocaine was properly seized and admitted into evidence. In re Whitley, 122 N.C. App. 290, 468 S.E.2d 610 (1996).

Warrantless Search Held Improper. —

Policeman's action in entering the back porch and looking through defendant's window was an unlawful search under the Fourth Amendment of the

United States Constitution and Art. I, § 20 of the North Carolina Constitution; thus, the items seized in a subsequent search of the apartment were tainted by the unlawful search. State v. Wooding, 117 N.C. App. 109, 449 S.E.2d 760 (1994).

Voluntary Consent. — Where defendant gave trooper permission to search the entire contents of defendant's suitcase and did not retract or limit the consent, the trooper had defendant's consent to open package of cocaine contained therein, and the trial court did not err in allowing the contents of the package into evidence at trial. State v. Jones, 96 N.C. App. 389, 386 S.E.2d 217 (1989), appeal dismissed, 326 N.C. 366, 389 S.E.2d 809 (1990).

In appeal from conviction for trafficking based upon drugs found in defendant's car after trooper had stopped car on suspicion that the driver was impaired, fact that trooper's conversation with defendant about driver's identity resulted in defendant giving his voluntary consent to a search of the car did not support defendant's arguments that trooper exceeded the permissible scope of his investigation. State v. Jones, 96 N.C. App. 389, 386 S.E.2d 217 (1989), appeal dismissed, 326 N.C. 366, 389 S.E.2d 809 (1990).

III. SEARCH WARRANTS.

Totality of Circumstances Test Adopted. — For resolving questions arising under this section with regard to the sufficiency of probable cause to support the issuance of a search warrant, the Supreme Court of North Carolina adopts the totality of circumstances test of Illinois v. Gates, 462 U.S. 213, 103 S. Ct. 2317, 76 L. Ed. 2d 527 (1983) and Massachusetts v. Upton, 466 U.S. 727, 104 S. Ct. 2085, 80 L. Ed. 2d 721 (1984) and rejects the two-pronged test of Aguilar v. Texas, 378 U.S. 108, 84 S. Ct. 1509, 12 L. Ed. 2d 723 (1964) and Spinelli v. United States, 393 U.S. 410, 89 S. Ct. 584, 21 L. Ed. 2d 637 (1969). State v. Arrington, 311 N.C. 633, 319 S.E.2d 254 (1984).

Under the totality of circumstances test, the two prongs of *Aguilar* and *Spinelli* — veracity and basis of knowledge — are still relevant, but are not to be accorded independent status. The task of the issuing magistrate is simply to make a practical, common sense decision whether, given all the circumstances set forth in the affidavit before him, including the "veracity" and "basis of knowledge" of persons supplying hearsay information, there is a fair probability that contraband or evidence of a crime will be found in a particular place. And the duty of the reviewing court is simply to ensure that the magistrate had a substantial basis for concluding that probable cause existed. State v. Arrington, 311 N.C. 633, 319 S.E.2d 254 (1984).

The North Carolina Supreme Court has adopted the "totality of the circumstances" test to determine the sufficiency of probable cause to issue a warrant under this section. State v. Isleib, 80 N.C. App. 599, 343 S.E.2d 234 (1986), rev'd on other grounds, 319 N.C. 634, 356 S.E.2d 573 (1987).

After-the-Fact Scrutiny of Affidavit Should Not Be De Novo Review. — After-the-fact scrutiny by courts of the sufficiency of an affidavit in support of a warrant should not take the form of de novo review. State v. Tuggle, 99 N.C. App. 164, 392 S.E.2d 654 (1990).

Severable Provisions. — Provisions of warrant which authorized police to search both for drugs and for "stolen goods" were severable, and the police could constitutionally search for the listed drugs or items of the same class, but the warrant could not authorize a general exploratory search of defendant's home and inventory of its contents. State v. Connard, 81 N.C. App. 327, 344 S.E.2d 568 (1986), aff'd, 319 N.C. 392, 354 S.E.2d 238 (1987).

Withdrawal of a blood sample from a person is a search subject to protection by this section. State v. Carter, 322 N.C. 709, 370 S.E.2d 553 (1988).

Under the State Constitution, a search warrant must be issued before a blood sample can be obtained, unless probable cause and exigent circumstances exist that would justify a warrantless search. State v. Carter, 322 N.C. 709, 370 S.E.2d 553 (1988).

Blood Sample Taken Without Consent or Search Warrant Unconstitutional. — Where defendant was already in custody, obtaining a sample of his blood pursuant to a nontestimonial identification order under Article 14 of Chapter 15A (§ 15A-271, et seq.), absent his consent or a search warrant, violated his rights under this section to be free from unreasonable searches and seizures, and the evidence should have been suppressed. State v. Carter, 322 N.C. 709, 370 S.E.2d 553 (1988).

Cumulative Evidence Held to Support Determination. — Although no single piece of evidence in the affidavit was conclusive, nevertheless, the information from all three pieces was consistent, and their cumulative evidence supported the determination that there was a "fair probability that contraband or evidence of a crime" would be found at the defendant's residence. State v. Tuggle, 99 N.C. App. 164, 392 S.E.2d 654 (1990).

Affidavit Insufficient to Find Probable Cause. — Where the affidavit contained a mere naked assertion that the informant at some time saw a "room full of marijuana" growing in the defendant's house, and the officer affiant made no attempt to corroborate the informant's story, but merely verified that the defendant lived in the house in question, the affidavit did not contain sufficient information on which to find probable cause, nor could the evidence seized as a result of the search be admitted under the "good faith exception" to the exclusionary rule in view of the fact that the officer took no reasonable steps to comply with U.S. Const., Amend. IV. State v. Newcomb, 84 N.C. App. 92, 351 S.E.2d 565 (1987).

Sec. 22. Modes of prosecution.

Legal Periodicals. —

For note examining the development of constitutional protections against race and class discrimination in the selection of jurors, and policy considerations associated with extending these principles to foreman selection procedures, in light of State v. Cofield, 77 N.C. App. 699, 336 S.E.2d 439 (1985), see 64 N.C.L. Rev. 1179 (1986).

CASE NOTES

A valid indictment is a condition precedent, etc. —

In accord with third paragraph in the main volume. See State v. Johnson, 77 N.C. App. 583, 335 S.E.2d 770 (1985).

All Essential Elements of Offense, etc. —

In accord with second paragraph in the main volume. See State v. Johnson, 77 N.C. App. 583, 335 S.E.2d 770 (1985).

No Requirement to Instruct Indicting Grand Jury on Elements of Crime. — A court is not required to instruct the indicting grand jury on the elements of the crime in question. State v. Treadwell, 99 N.C. App. 769, 394 S.E.2d 245 (1990).

Cited in State v. Carson, 320 N.C. 328, 357 S.E.2d 662 (1987); State v. Camacho, 329 N.C. 589, 406 S.E.2d 868 (1991); State ex rel. Thornburg v. Lot & Bldgs. at 800 Waughtown St., 107 N.C. App. 559, 421 S.E.2d 374 (1992); State v. Ward, 338 N.C. 64, 449 S.E.2d 709 (1994), cert. denied, — U.S. —, 115 S. Ct. 2014, 131 L. Ed. 2d 1013 (1995); State v. Snyder, 343 N.C. 61, 468 S.E.2d 221 (1996).

Sec. 23. Rights of accused.

Legal Periodicals. —

For 1984 survey, "When Is a Confession Coerced and When Is It Voluntary," see 63 N.C.L. Rev. 1214 (1985).

CASE NOTES

I. General Consideration.
II. Right to Be Informed of Accusation.
III. Right of Confrontation.
  A. In General.
  B. Illustrative Cases.
IV. Right to Counsel.
  A. In General.
  B. When Right Applies.

V. Self-incrimination.
  A. In General.
  B. Confessions.
VI. Witness Fees, Costs, Etc.

I. GENERAL CONSIDERATION.

Informing Defendant of His Rights. — Defendant was not "in custody" for Miranda purposes as a reasonable person in defendant's position would have concluded he was free to terminate the interviews if he so chose. State v. Corbett, 339 N.C. 313, 451 S.E.2d 252 (1994).

When a motion to continue is based on a constitutional right, the trial court's ruling becomes a question of law and, upon appeal, it is subject to review by examination of the particular circumstances as presented by the record, and the denial of a motion to continue, regardless of its nature, is grounds for a new trial only upon a showing by defendant that the denial was erroneous and that his case was prejudiced as a result of the error. If the error amounts to a constitutional violation, as is here contended, there is prejudice requiring a new trial unless the State satisfies this court that the error is harmless beyond a reasonable doubt. State v. Gardner, 322 N.C. 591, 369 S.E.2d 593 (1988).

Error in conducting an informal meeting in chambers to discuss jury instructions, outside the presence of defendant, prior to the formal charge conference held in open court, was harmless beyond a reasonable doubt. State v. Brogden, 329 N.C. 534, 407 S.E.2d 158 (1991).

Bench Conferences. — Where the trial court reconstructed the substance of the bench conferences with the prospective jurors for the record and, before ruling, gave the defendant an opportunity to be heard, these exchanges at the bench which constituted reversible error did not deprive the defendant of his constitutional right to be present at every state of the proceeding. State v. Ali, 329 N.C. 394, 407 S.E.2d 183 (1991).

Although trial court held private, unrecorded, sidebar conferences with a number of jury pool members, because these conferences took place prior to the commencement of defendant's trial, no error, constitutional or otherwise, was committed. State v. Rannels, 333 N.C. 644, 430 S.E.2d 254 (1993).

Judge's Contacts with Jurors. — The transcript lent support to contention that the trial judge did in fact go to the grand jury room to instruct the prospective jurors that they were at break; however, there was no prejudicial error based on this contact. State v. Gay, 334 N.C. 467, 434 S.E.2d 840 (1993).

Denial of access to a witness to a breathalyzer test when the State's sole evidence of the offense of driving while impaired is the personal observations of the authorities would constitute a flagrant violation of defendant's constitutional right to obtain witnesses under this section as a matter of law and would require that the charges be dismissed. State v. Ferguson, 90 N.C. App. 513, 369 S.E.2d 378, cert. denied, 323 N.C. 367, 373 S.E.2d 551 (1988).

Rebuttal of Insanity Defense with Psychiatric Evidence. — A fair opportunity to rebut a defendant's insanity defense may include more than one psychiatric examination of the defendant. State v. Huff, 325 N.C. 1, 381 S.E.2d 635 (1989), vacated and remanded for further consideration at 497 U.S. 1021, 110 S. Ct. 3266, 111 L. Ed. 2d 777 (1990), in light of McKoy v. North Carolina, 494 U.S. 433, 110 S. Ct. 1227, 108 L. Ed. 2d 369 (1990), death sentence vacated, remanded for new capital sentencing proceeding, State v. Huff, 328 N.C. 532, 402 S.E.2d 577 (1991).

When a defendant relies on the insanity defense and introduces expert testimony on his mental status, the prosecution may introduce expert testimony derived from prior court-ordered psychiatric examinations for the purpose of rebutting that testimony without implicating U.S. Const., Amend. V or this section of the Constitution of North Carolina. State v. Huff, 325 N.C. 1, 381 S.E.2d 635 (1989), vacated and remanded for further consideration at 497 U.S. 1021, 110 S. Ct. 3266, 111 L. Ed. 2d 777 (1990), in light of McKoy v. North Carolina, 494 U.S. 433, 110 S. Ct. 1227, 108 L. Ed. 2d 369 (1990), death sentence vacated, remanded for new capital sentencing proceeding, State v. Huff, 328 N.C. 532, 402 S.E.2d 577 (1991).

Defendant's absence during the final two hours of jury deliberations, did not result in substantial and irreparable prejudice to her case and was harmless error with regard to denying her the constitutional right to be present at every stage of her trial. State v. Webster, 111 N.C. App. 72, 431 S.E.2d 808 (1993), aff'd, 337 N.C. 674, 447 S.E.2d 349 (1994), cert. denied, 335 N.C. 180, 438 S.E.2d 206 (1993).

Defendant's right to be present at every stage of the trial was not violated. State v. May, 334 N.C. 609, 434 S.E.2d 180 (1993), cert. denied, — U.S. —, 114 S. Ct. 1310, 127 L. Ed. 2d 661 (1994).

Applied in State v. Colbert, 311 N.C. 283, 316 S.E.2d 79 (1984); State v. Matthews, 69 N.C. App. 526, 317 S.E.2d 62 (1984); State v. Hunt, 72 N.C. App. 59, 323 S.E.2d 490 (1984); State v. Richardson, 99 N.C. App. 496, 393 S.E.2d 333 (1990); State v. Eason, 328 N.C. 409, 402 S.E.2d 809 (1991); State v. Monroe, 330 N.C. 846, 412 S.E.2d 652 (1992); State v. Bromfield, 332 N.C. 24, 418 S.E.2d 491 (1992); State v. Crummy, 107 N.C. App. 305, 420 S.E.2d 448 (1992); State v. Cummings, 332 N.C. 487, 422 S.E.2d 692 (1992); State v. Harris, 111 N.C. App. 58, 431 S.E.2d 792 (1993).

Stated in State v. James, 111 N.C. App. 785, 433 S.E.2d 755 (1993).

Cited in State v. Abney, 79 N.C. App. 649, 339 S.E.2d 841 (1986); State v. Kuplen, 316 N.C. 387, 343 S.E.2d 793 (1986); State v. Johnson, 317 N.C. 343, 346 S.E.2d 596 (1986); State v. Worthington, 84 N.C. App. 150, 352 S.E.2d 695 (1987); State v. Kennedy, 320 N.C. 20, 357 S.E.2d 359 (1987); State v. Carson, 320 N.C. 328, 357 S.E.2d 662 (1987); State v. Kerley, 87 N.C. App. 240, 360 S.E.2d 464 (1987); State v. Jones, 322 N.C. 406, 368 S.E.2d 844 (1988); State v. Hope, 96 N.C. App. 498, 386 S.E.2d 224 (1989); State v. Seaberry, 97 N.C. App. 203, 388 S.E.2d 184 (1990); State v. Jones, 97 N.C. App. 189, 388 S.E.2d 213 (1990); State v. Camacho, 329 N.C. 589, 406 S.E.2d 868 (1991); State v. Cunningham, 108 N.C. App. 185, 423 S.E.2d 802 (1992); State v. Medlin, 333 N.C. 280, 426 S.E.2d 402 (1993); State v. Ainsworth, 109 N.C. App. 136, 426 S.E.2d 410 (1993); State v. Rogers, 109 N.C. App. 491, 428 S.E.2d 220 (1993); State v. Harris, 333 N.C. 544, 428 S.E.2d 823 (1993); State v. Minter, 111 N.C. App. 40, 432 S.E.2d 146 (1993); State v. Harrington, 335 N.C. 105, 436 S.E.2d 235 (1993); State v. Lee, 335 N.C. 244, 439 S.E.2d 547 (1994), cert. denied, — U.S. —, 115 S. Ct. 239, 130 L. Ed. 2d 162 (1994); State v. McIntosh, 336 N.C. 517, 444 S.E.2d 438 (1994); State v. Fisher, 336 N.C. 684, 445 S.E.2d 866 (1994), cert. denied, — U.S. —, 115 S. Ct. 768, 130 L. Ed. 2d 665 (1995); State v. Peterson, 337 N.C. 384, 446 S.E.2d 43 (1994); State v. Ward, 338 N.C. 64, 449 S.E.2d 709 (1994), cert. denied, — U.S. —, 115 S. Ct. 2014, 131 L. Ed. 2d 1013 (1995); State v. Thompson, 118 N.C. App. 33, 454 S.E.2d 271 (1995); State v. Porter, 340 N.C. 320, 457 S.E.2d 716 (1995); State v. Hinson, 341 N.C. 66, 459 S.E.2d 261 (1995); State v. Burr, 341 N.C. 263, 461 S.E.2d 602 (1995); State v. Frye, 341 N.C. 470, 461 S.E.2d 664 (1995); State v. Robinson, 342 N.C. 74, 463 S.E.2d 218 (1995); State v. Jaynes, 342 N.C. 249, 464 S.E.2d 448 (1995); State v. Chapman, 342 N.C. 330, 464 S.E.2d 661 (1995), cert. denied, — U.S. —, 116 S. Ct. 2560, 135 L. Ed. 2d 1077 (1996).

II. RIGHT TO BE INFORMED OF ACCUSATION.

Form of Bill for Homicide. — This section and § 15A-924(a)(5) did not specifically repeal § 15-144, relating to essentials of a bill for homicide, nor did they repeal it by implication. State v. Avery, 315 N.C. 1, 337 S.E.2d 786 (1985), aff'd, 95 N.C. 572, 383 S.E.2d 224 (1989).

Short-form murder indictment which did not allege premeditation nor the elements of felony murder was held not defective. State v. Harris, 323 N.C. 112, 371 S.E.2d 689 (1988).

III. RIGHT OF CONFRONTATION.

A. In General.

Actual Presence Required. — The essential characteristic of defendant's constitutional right to presence is just that, his actual presence during trial. State v. Buchanan, 330 N.C. 202, 410 S.E.2d 832 (1991).

Under the N.C. State Constitution, defendant's actual presence is required throughout his trial, not just at particularly important junctures. State v. Buchanan, 330 N.C. 202, 410 S.E.2d 832 (1991).

Certain Violations of Right May Be Harmless. — Notwithstanding an accused's right to be present, at all stages of trial, certain violations of this right may be harmless if such appears from the record. State v. Buchanan, 330 N.C. 202, 410 S.E.2d 832 (1991).

Bench Conferences Not Violative of Right to Be Present. — A defendant's state constitutional right to be present at all stages of his capital trial is not violated when, with defendant present in the courtroom, the trial court conducts bench conferences, even though unrecorded, with counsel for both parties. State v. Buchanan, 330 N.C. 202, 410 S.E.2d 832 (1991).

If, however, the subject matter of the conference implicates the defendant's confrontation rights, or is such that the defendant's presence would have a reasonably substantial relation to this opportunity to defend, the defendant would have a constitutional right to be present. State v. Buchanan, 330 N.C. 202, 410 S.E.2d 832 (1991).

Defendant's absence during certain conferences and discussions in his capital trial did not prejudice defendant in any way and was harmless beyond a reasonable doubt, where defendant's counsel was present, as was the court reporter, who recorded and transcribed the complete proceedings, the subjects of the conferences and discussions were either points of law, procedural matters, or administrative matters, none of which involved communication with the jury, and no witness gave testimony concerning defendant's guilt. State v. Robinson, 330 N.C. 1, 409 S.E.2d 288 (1991).

Right to Be Present at Every Stage. — This section is the sole source of the criminal defendant's nonwaivable state right to be present at every stage of his capital trial and of the corollary duty imposed on the trial court to insure his presence. State v. Huff, 325 N.C. 1, 381 S.E.2d 635 (1989), vacated and remanded for further consideration at 497 U.S. 1021, 110 S. Ct. 3266, 111 L. Ed. 2d 777 (1990), in light of McKoy v. North Carolina, 494 U.S. 433, 110 S. Ct. 1227, 108 L. Ed. 2d 369 (1990), death sentence vacated, remanded for new capital sentencing proceeding, State v. Huff, 328 N.C. 532, 402 S.E.2d 577 (1991).

The confrontation clause of the Constitution of North Carolina guarantees the right of the defendant to be present at every stage of the trial. This state constitutional protection afforded to the defendant imposes on the trial court the affirmative duty to insure the defendant's presence at every stage of a capital trial. The defendant's right to be present at every stage of the trial ought to be kept forever sacred and inviolate. In fact, the defendant's right to be present at every stage of his capital trial is not waivable. State v. Moss, 332 N.C. 65, 418 S.E.2d 213 (1992).

Right Does Not Apply to Physical Evidence. — This section only pertains to witnesses, and does not create a constitutional right of confrontation to physical evidence. State v. Alston, 91 N.C. App. 707, 373 S.E.2d 306 (1988).

Absence During Part of Prosecution's Presentation. — Nothing in the record showed that defendant was prejudiced by his absence during part of the presentation of the prosecution's evidence in defendant's capital case where all proceedings took place in open court; everything that took place was reflected in the record, and the record showed that defense counsel were in court and participated throughout defendant's absence to protect his interest, the trial judge told counsel they could confer with defendant as to the possibility of his return at any time, and the trial judge undertook to perform his duty to assure defendant's presence. State v. Huff, 325 N.C. 1, 381 S.E.2d 635 (1989), vacated and remanded for further consideration at 497 U.S. 1021, 110 S. Ct. 3266, 111 L. Ed. 2d 777 (1990), in light of McKoy v. North Carolina, 494 U.S. 433, 110 S. Ct. 1227, 108 L. Ed. 2d 369 (1990), death sentence vacated, remanded for new capital sentencing proceeding, State v. Huff, 328 N.C. 532, 402 S.E.2d 577 (1991).

Right Not Violated When Court Conducted Bench Conferences with Counsel for Both Parties. — A defendant's state constitutional right to be present at all stages of his capital trial was not violated when the trial court conducted bench conferences with counsel for both parties while the defendant was present in the courtroom. State v. Upchurch, 332 N.C. 439, 421 S.E.2d 577 (1992).

Where the trial court conducted numerous bench conferences with counsel in which defendant did not participate, nothing in the record indicated that defendant was not present in the courtroom during their discussions, the trial court received no evidence during any of these bench conferences, and most of the discussion concerned mechanical aspects of the proceedings, including lunch breaks, presentation of proposed instruction by the trial court to counsel for their comments, and argument of technical motions or objections out of the jury's hearing; therefore, because defendant was represented by counsel during each of these conferences, nothing in the record demonstrates how defendant's presence would have served any useful purpose, nor does defendant demonstrate how the conferences impinged upon his opportunity to defend and failed to demonstrate any violation of his constitutional protections. State v. Bacon, 337 N.C. 66, 446 S.E.2d 542 (1994), cert. denied, — U.S. —, 115 S. Ct. 1120, 130 L. Ed. 2d 1083 (1995).

Right Violated by Court's Private Bench Conferences With Jurors. — The fact that the jury recommended and the trial court entered a sentence of life imprisonment did not change the capital nature of that trial or his status as a capital defendant in that trial. Therefore, the unwaiveable requirement of his presence applied at every stage of his trial and was violated by the trial court's private bench conferences with prospective jurors. State v. Johnston, 331 N.C. 680, 417 S.E.2d 228 (1992).

Jury selection is a stage of a capital trial at which the defendant must be present. The trial court erred by conducting bench conferences with prospective jurors out of the hearing of the defendant and his counsel. Therefore, the Supreme Court had to order a new trial. State v. Moss, 332 N.C. 65, 418 S.E.2d 213 (1992).

Exclusion of Defendant from In Camera Hearing with Juror. — Although it is clearly error for the trial court to communicate with a juror in chambers in the absence of defendant, counsel, or a court reporter, not every violation of a constitutional right is prejudicial. Where the record of an in camera hearing attended only by a juror, the trial judge, counsel, and a court reporter reflected the benign substance of the conversation, the juror's growing unease with her ability to impose the death penalty, and where after the hearing the juror was promptly and properly removed for cause, obviating the possibility that anything said to her privately by the trial court might infect the jury as a whole, this action was harmless beyond a reasonable doubt. State v. Artis, 325 N.C. 278, 384 S.E.2d 470 (1989), sentence vacated and remanded for further consideration at 494 U.S. 1023, 110 S. Ct. 1466, 108 L. Ed. 2d 604 (1990), in light of McKoy v. North Carolina, 494 U.S. 433, 110 S. Ct. 1227, 108 L. Ed. 2d 369 (1990).

It was error for the trial court to exclude the defendants, their counsel, and the court reporter from its private conversations with prospective jurors prior to excusing those jurors. State v. Johnston, 331 N.C. 680, 417 S.E.2d 228 (1992).

Although it is error for the trial court to conduct a chambers conference with counsel for the state and counsel for defendant in defendant's absence, where defendant was present during the questioning of a juror and was fully apprised of the facts underlying the reasons for the juror's excusal, defendant had full opportunity to be heard and to lodge any objection he might have. State v. Daniels, 337 N.C. 243, 446 S.E.2d 298 (1994), cert. denied, — U.S. —, 115 S. Ct. 953, 130 L. Ed. 2d 895 (1995).

Judge's Ex Parte Communications with Jury Before Verdict Rendered. — Where, during the course of the trial, the presiding trial judge engaged in an ex parte communication with the jury, and prior to reconvening court, the judge entered the jury room where the jurors had gathered and was alone with the jurors, this conduct on the part of the presiding judge violated the defendant's rights under N.C. Const., Art. I, § 23 and this section, and U.S. Const., Amends. VI and XIV. State v. Callahan, 102 N.C. App. 344, 401 S.E.2d 793 (1991).

Assuming arguendo that judge's chance meeting in the corridor with jurors during a recess at which time judge and jurors discussed, inter alia, cameras in the courtroom and selection of a foreman, did constitute a "stage" of a capital proceeding, the error, if any, was harmless beyond a reasonable doubt where there existed in the record a reconstruction of the ex parte conversations. State v. Hudson, 331 N.C. 122, 415 S.E.2d 732 (1992), cert. denied, 506 U.S. 1055, 113 S. Ct. 983, 122 L. Ed. 2d 136, rehearing denied, 507 U.S. 967, 113 S. Ct. 1404, 122 L. Ed. 2d 776 (1993).

Where the court found two prospective jurors were ineligible to serve due to their recent service as prospective jurors, and third prospective juror, who had arranged to be a pallbearer at a funeral, was deferred for a "manifestly unobjectionable" reason, the error of the judge in communicating ex parte with the prospective jurors was harmless beyond a reasonable doubt. State v. Adams, 335 N.C. 401, 439 S.E.2d 760 (1994).

Ex parte "communication" between judge and jury, wherein the trial judge routinely inquired about any problems individual jurors might have that he needed to know about, did not violate defendant's state and federal constitutional rights to be present during the proceedings against him, where the trial judge's statement indicated that no such problems were either expressed by the jurors or discussed with them by the trial judge. State v. Laws, 325 N.C. 81, 381 S.E.2d 609 (1989), sentence vacated and remanded for further consideration at 494 U.S. 1022, 110 S. Ct. 1465, 108 L. Ed. 2d 603 (1990), in light of McKoy v. North Carolina, 494 U.S. 433, 110 S. Ct. 1227, 108 L. Ed. 2d 369 (1990), death sentence aff'd, State v. Laws, 328 N.C. 550, 402 S.E.2d 573, cert. denied, 502 U.S. 876, 112 S. Ct. 216, 116 L. Ed. 2d 174, rehearing denied, 502 U.S. 1001, 112 S. Ct. 627, 116 L. Ed. 2d 648 (1991).

Where there was a sufficient record of the substance of ex parte communications between the judge and both prosecutor and defense counsel and defendant had opportunity to challenge the ruling in open court when it was announced in his presence, defendant was not prejudiced by the communications. State v. Daniels, 337 N.C. 243, 446 S.E.2d 298 (1994), cert. denied, — U.S. —, 115 S. Ct. 953, 130 L. Ed. 2d 895 (1995).

Private Discussion Between Judge and Jurors Who Had Been Dismissed. — Defendant's State and federal constitutional rights to be present at all stages of his trial were not violated when the trial court talked privately with jurors, since the transcript showed that the trial judge sent all those who still were prospective jurors home and indicated that he was going to talk only to those whom he had dismissed from jury service. State v. Laws, 325 N.C. 81, 381 S.E.2d 609 (1989), sentence vacated and remanded for further consideration at 494 U.S. 1022, 110 S. Ct. 1465, 108 L. Ed. 2d 603 (1990), in light of McKoy v. North Carolina, 494 U.S. 433, 110 S. Ct. 1227, 108 L. Ed. 2d 369 (1990), death sentence aff'd, State v. Laws, 328 N.C. 550, 402 S.E.2d 573, cert. denied, 502 U.S. 876, 112 S. Ct. 216, 116 L. Ed. 2d 174, rehearing denied, 502 U.S. 1001, 112 S. Ct. 627, 116 L. Ed. 2d 648 (1991).

Bailiff's Communication with Prospective Jurors. — Where the bailiff was ordered to engage in unrecorded communications with prospective jurors and the trial jury, the actions of the clerk involved the clerk's administrative duties of calling the jury roll and explaining to the jurors what time they needed to arrive at court and did not relate to the consideration of defendant's guilt or innocence; therefore, no constitutional violation occurred. State v. Bacon, 337 N.C. 66, 446 S.E.2d 542 (1994), cert. denied, — U.S. —, 115 S. Ct. 1120, 130 L. Ed. 2d 1083 (1995).

To convict the defendant under the theory of aiding and abetting, the state has the burden of proving, among other things, that the crimes alleged have in fact been committed. Although it is not required that the principal be convicted, the guilt of the principal must be established beyond a reasonable doubt. This burden cannot be carried by testimony concerning judgments rendered in other trials to which the defendant was not a party and not able to cross-examine witnesses. The admission of such evidence violates defendant's right to confrontation under the Constitution of the United States and the Constitution of North Carolina. State v. Brown, 319 N.C. 361, 354 S.E.2d 225 (1987), overruling State v. Duncan, 28 N.C. 98 (1846) and State v. Chittem, 13 N.C. 49 (1830).

Where Child Is Victim. — When considering admission of a child victim's statement to a social worker when the child is found to be incompetent as a witness, the confrontation clause and § 8C-1, Rule 803(24) require a case-by-case examination of the facts. State v. Deanes, 323 N.C. 508, 374 S.E.2d 249 (1988), cert. denied, 490 U.S. 1101, 109 S. Ct. 2455, 104 L. Ed. 2d 1009 (1989).

Statements falling within an exception to the general prohibition against hearsay may be admitted into evidence without violating a defendant's right to confrontation, if the evidence is reliable. State v. Stager, 329 N.C. 278, 406 S.E.2d 876 (1991).

Use of Hearsay in Criminal Trial. — A prosecutor is prohibited by U.S. Const., Amend. VI and this section from introducing any hearsay evidence in a criminal trial unless two requirements are met. The prosecution must show both the necessity for using the hearsay testimony and the inherent trustworthiness of the original declaration. State v. Gregory, 78 N.C. App. 565, 338 S.E.2d 110 (1985), cert. denied and appeal dismissed, 316 N.C. 382, 342 S.E.2d 901 (1986).

Rights of Person Accused of Offense, etc. —

Magistrate correctly imposed pretrial release restriction requiring a sober responsible adult to take custody of the defendant pursuant to § 15A-534.2; there was no constitutional violation of defendant's constitutional right to obtain evidence on his own behalf. State v. Bumgarner, 97 N.C. App. 567, 389 S.E.2d 425, cert. denied and appeal dismissed, 326 N.C. 599, 393 S.E.2d 873 (1990).

Proper standard for reversal in

reviewing violations under this section of defendant's right to be present at all stages of his capital trial is the rigorous standard prescribed for review of violations of defendant's right to be present at trial under the federal Constitution. State v. Huff, 325 N.C. 1, 381 S.E.2d 635 (1989), vacated and remanded for further consideration at 497 U.S. 1021, 110 S. Ct. 3266, 111 L. Ed. 2d 777 (1990), in light of McKoy v. North Carolina, 494 U.S. 433, 110 S. Ct. 1227, 108 L. Ed. 2d 369 (1990), death sentence vacated, remanded for new capital sentencing proceeding, State v. Huff, 328 N.C. 532, 402 S.E.2d 577 (1991).

The proper standard for reversal in reviewing violations of defendant's state constitutional right to be present at his capital trial is the "harmless beyond a reasonable doubt" standard, and not the standard apparently prescribed in § 15A-1443(a). State v. Huff, 325 N.C. 1, 381 S.E.2d 635 (1989), vacated and remanded for further consideration at 497 U.S. 1021, 110 S. Ct. 3266, 111 L. Ed. 2d 777 (1990), in light of McKoy v. North Carolina, 494 U.S. 433, 110 S. Ct. 1227, 108 L. Ed. 2d 369 (1990), death sentence vacated, remanded for new capital sentencing proceeding, State v. Huff, 328 N.C. 532, 402 S.E.2d 577 (1991).

Waiver of Rights. — For a case in which a defendant was held to have waived his rights under this section through his insufficiently explained absence from trial, see State v. Richardson, 330 N.C. 174, 410 S.E.2d 61 (1991).

B. Illustrative Cases.

The taking of depositions in another state in the absence of the defendant was assumed by the court to be a "stage" of his capital trial. However, it was clear that all of the testimony of the witnesses during the taking of those depositions tended to support mitigating circumstances. The admission of those depositions into evidence during the capital sentencing proceeding, therefore, could not possibly have harmed the defendant. Accordingly, the State bore its burden of showing that any error as a result was harmless beyond a reasonable doubt. State v. McCollum, 334 N.C. 208, 433 S.E.2d 144 (1993), cert. denied, — U.S. —, 114 S. Ct. 2784, 129 L. Ed. 2d 895, reh'g denied, — U.S. —, 115 S. Ct. 26, 129 L. Ed. 2d 924 (1994).

Voir Dire. — The questioning of jurors in defendant's absence erroneously deprived defendant of his right to be present at his trial, but the error was harmless where the court was satisfied beyond a reasonable doubt that defendant's absence during the preliminary questioning of prospective jurors did not result in the rejection of any juror whom defendant was entitled to have on the panel or the seating of any juror whom defendant was entitled to reject either for cause or peremptorily. State v. Payne, 328 N.C. 377, 402 S.E.2d 582 (1991).

This section gives a criminal defendant the right to be present at every stage of her trial. State v. Callahan, 102 N.C. App. 344, 401 S.E.2d 793 (1991).

Trial court's action in excusing prospective jurors as a result of its private unrecorded bench conferences with them violated defendant's state constitutional right to be present at every stage of the trial and violated statutory requirements to make a true, complete and accurate record of the jury selection in a capital trial pursuant to § 15A-1241(a). State v. Smith, 326 N.C. 792, 392 S.E.2d 362 (1990).

Absence of Material Witness. —

Trial court did not violate this section by denying a capital murder defendant's motions for a recess or continuance and for a mistrial after an eyewitness could not be located; defendant had the benefit of witness' tape-recorded statements to both the Sheriff's Department and his own counsel, and the evidence indicated the witness had gone into hiding for a long period under circumstances indicating no likelihood of locating him within a reasonable period of time. State v. Roper, 328 N.C. 337, 402 S.E.2d 600, cert. denied, 502 U.S. 902, 112 S. Ct. 280, 116 L. Ed. 2d 232 (1991).

Use of Closed-Circuit Television in Courtroom Held Adequate to Allow Defendant to Cross-Examine Child Victim. — Where, in prosecution for taking indecent liberties with a four-year-old child, during voir dire hearing as to victim's competency as a witness, defendant, although absent from the courtroom, was able to hear all testimony, interact freely with his attorney, and through his attorney confront the victim, thereby accomplishing effective cross-examination, the exclusion of defendant did not violate N.C. Const., Art. I, §§ 18, 19 or 23, as the trial court's use of a closed-circuit television and its act of providing defendant and his attorney adequate opportunity to communicate during the victim's testimony were sufficient to permit defendant to hear the evidence and to refute it. State v. Jones, 89 N.C. App. 584, 367 S.E.2d 139 (1988).

State Fulfilled Confrontation Clause Requirement by Showing Good Faith Attempt. — Where a four-year-old child was unable to answer question put to her regarding sexual abuse due to fear, the judge's declaration that the child "is simply going to be unable to testify," amounted to an implicit declaration of unavailability; the State fulfilled the constitutional requirement of the confrontation clause by showing a good faith attempt to secure the witness for trial since the State produced the witness and attempted to elicit her testimony. State v. Chandler, 324 N.C. 172, 376 S.E.2d 728 (1989).

New Trial Required Where In-Chambers Conference Held in Defendant's Absence. — Because in-chambers conference that took place with the attorneys in defendant's absence at conclusion of testimony by forensic psychiatry expert was not recorded, and the nature and content of the private discussion could not be gleaned from the record, the state failed to meet its burden of showing that holding in-chambers discussion in defendant's absence was harmless beyond a reasonable doubt, and a new trial was ordered. State v. Exum, 343 N.C. 291, 470 S.E.2d 333 (1996).

Violation of Confrontation Clause Was Not Shown. — Where defendant had the opportunity to cross-examine both witnesses in his murder trial the confrontation clause was not violated as to the victim's grandmother's testimony concerning what she told the defendant and as to the letter written from the victim to the defendant, authenticated by two witnesses. State v. Quick, 323 N.C. 675, 375 S.E.2d 156 (1989).

Unavailable Witness. — Where the record demonstrated the necessity for using hearsay declarations (in this case, unavailability of the witness), and the inherent trustworthiness of the declarations, defendant's confrontation rights were not violated. State v. Deanes, 323 N.C. 508, 374 S.E.2d 249 (1988), cert. denied, 490 U.S. 1101, 109 S. Ct. 2455, 104 L. Ed. 2d 1009 (1989).

IV. RIGHT TO COUNSEL.

A. In General.

Right to Counsel Guaranteed. — An accused's right to counsel in a criminal prosecution is guaranteed by the U.S. Const., Amend. VI and is applicable to the states through U.S. Const., Amend. XIV, N.C. Const., Art. I, § 19 and this section. State v. Shores, 102 N.C. App. 473, 402 S.E.2d 162 (1991).

A defendant has the constitutional right to be represented by counsel whom he has selected and employed. State v. Gibson, 229 N.C. 497, 50 S.E.2d 520 (1948); State v. Morris, 275 N.C. 50, 165 S.E.2d 245 (1969).

Amount of Preparation Time. —

The circumstances surrounding the trial court's denial of the defendant's motion to continue did not demonstrate that it was unlikely that the defendant could have received effective assistance of counsel. The defendant failed to offer evidence tending to establish a violation of his constitutional right to a reasonable time to investigate, prepare and present his defense for murder charge and did not show that he had inadequate time to confer with counsel or that counsel had inadequate time to prepare for trial. State v. Tunstall, 334 N.C. 320, 432 S.E.2d 331 (1993).

Test of effective assistance of counsel, etc. —

In accord with original. See State v. Scober, 74 N.C. App. 469, 328 S.E.2d 590 (1985).

The benchmark for judging any claim of ineffectiveness must be whether counsel's conduct so undermined the proper functioning of the adversarial process that the trial could not be relied on as having produced a just result. State v. Dockery, 78 N.C. App. 190, 336 S.E.2d 719 (1985).

Breach of Attorneys' Duty Does Not Automatically Require Reversal. — The duties of an attorney representing a criminal defendant include the duty of loyalty, a duty to advocate defendant's cause, and the duty to consult with defendant, investigate defendant's case and keep defendant informed. However, a breach of one of these duties does not automatically require reversal of defendant's conviction. Defendant must also demonstrate that the professionally unreasonable conduct of his counsel resulted in prejudice to defendant. State v. Dockery, 78 N.C. App. 190, 336 S.E.2d 719 (1985).

For case upholding finding of fact that defendant's counsel was not ineffective but that if he was, defendant did not show any prejudice, see State v. Swann, 322 N.C. 666, 370 S.E.2d 533 (1988).

Denial of Continuance to Prepare Closing Argument. — Defendant's right to effective assistance of counsel was not denied when the trial court refused to continue the trial to give the defendant's counsel the weekend to prepare a closing argument for the guilt-innocence determination phase of the trial; defense counsel's closing argument met an objective standard of reasonableness and was within the range of competence demanded of attorneys in capital cases. State v. Laws, 325 N.C. 81, 381 S.E.2d 609 (1989), sentence vacated and remanded for further consideration at 494 U.S. 1022, 110 S. Ct. 1465, 108 L. Ed. 2d 603 (1990), in light of McKoy v. North Carolina, 494 U.S. 433, 110 S. Ct. 1227, 108 L. Ed. 2d 369 (1990), death sentence aff'd, State v. Laws, 328 N.C. 550, 402 S.E.2d 573, cert. denied, 502 U.S. 876, 112 S. Ct. 127, 116 L. Ed. 2d 174, rehearing denied, 502 U.S. 1001, 112 S. Ct. 627, 116 L. Ed. 2d 648 (1991).

Admission of Testimony of Second Psychiatric Examination. — Defendant's right to effective assistance of counsel was not violated by admission of second treatment team's testimony as to information obtained during second court-ordered psychiatric examination, even though that admission was for the purpose of determining his capacity to proceed, as opposed to his sanity at the time of the crime; defendant had the opportunity to discuss with his lawyer whether or not to submit to the second court-ordered examination and to discuss its scope as well, and the absence of express language in the second order specifying defendant's examination to determine his mental state at the time of the offenses was not significant. State v. Huff, 325 N.C. 1, 381 S.E.2d 635 (1989), vacated and remanded for further consideration at 497 U.S. 1021, 110 S. Ct. 3266, 111 L. Ed. 2d 777 (1990), in light of McKoy v. North Carolina, 494 U.S. 433, 110 S. Ct. 1227, 108 L. Ed. 2d 369 (1990), death sentence vacated, remanded for new capital sentencing proceeding, State v. Huff, 328 N.C. 532, 402 S.E.2d 577 (1991).

Burden on Defendant to Show Supportable Defense. — In bringing an ineffective assistance claim based on the failure to adequately present a defense, the central question is whether a supportable defense could have been developed. The burden of showing the probability that this defense existed is on the defendant. State v. Dockery, 78 N.C. App. 190, 336 S.E.2d 719 (1985).

Ineffective Representation Shown. — The counsel's substandard performance was prejudicial to the rape defendant, where the defense's failure to produce any evidence to support the theories proffered at the outset of the trial, including consent of the victim and inability of the defendant to perform the alleged acts, formed the basis of one of the principal closing arguments made by the State in favor of conviction. State v. Moorman, 320 N.C. 387, 358 S.E.2d 502 (1987).

Ineffective Representation Not Shown. —

In accord with the first paragraph in the main volume. See State v. Attmore, 92 N.C. App. 385, 374 S.E.2d 649 (1988), cert. denied, 324 N.C. 248, 377 S.E.2d 757 (1989).

But Defendant Need Not Know the Source of the Right Before Waiving It. — The court disagreed with contention by the defendant that in order to waive his right to counsel a defendant must have explained to him his right to counsel under U.S. Const., Amend. VI and under this section. If a defendant is told he has a right to counsel, as the defendant was, he does not have to know the precise source of the right before waiving it. State v. Palmer, 334 N.C. 104, 431 S.E.2d 172 (1993).

B. When Right Applies.

Jury Instructions. — The trial court committed reversible error by administering admonitions to the jurors out of open court and in the absence of the defendant, counsel, or a court reporter. State v. Payne, 320 N.C. 138, 357 S.E.2d 612 (1987); State v. Boyd, 332 N.C. 101, 418 S.E.2d 471 (1992).

V. SELF-INCRIMINATION.

A. In General.

Privilege Protects Against Only Real Dangers. —

In accord with main volume. See Shaw v. Williamson, 75 N.C. App. 604, 331 S.E.2d 203, cert. denied, 314 N.C. 669, 335 S.E.2d 496 (1985).

Civil Actions Involving Arrest, Imprisonment or Execution Against the Person. — The constitutional protection against self-incrimination extends to civil actions that subject one to arrest, imprisonment or execution against the person. Shaw v. Williamson, 75 N.C. App. 604, 331 S.E.2d 203, cert. denied, 314 N.C. 669, 335 S.E.2d 496 (1985).

Refusal to Answer Interrogatories

in Civil Action for Punitive Damages. —

In a wrongful death action, defendant faced no peril of being subject to execution against the person for not satisfying a judgment for punitive damages, as there was no allegation in the complaint that would support the required statutory findings for execution against the person. Therefore, there was no basis for defendant declining to answer interrogatories on the grounds of self-incrimination. Shaw v. Williamson, 75 N.C. App. 604, 331 S.E.2d 203, cert. denied, 314 N.C. 669, 335 S.E.2d 496 (1985).

In a wrongful death action, defendant could not have incriminated himself criminally by answering certain interrogatories, because, based on the same incident referred to in the complaint, he was charged with death by vehicle and driving while intoxicated, pled guilty, and complied with the judgments entered on the convictions. Shaw v. Williamson, 75 N.C. App. 604, 331 S.E.2d 203, cert. denied, 314 N.C. 669, 335 S.E.2d 496 (1985).

Necessity of Advising Defendant of Rights Where Significantly Deprived of Freedom. — When an officer told defendant that he would get a warrant for him and would leave an officer at defendant's home until the warrant could be procured, defendant was deprived of his freedom in a significant way; it was therefore necessary to advise him of his rights before his answer to the question as to how long he had been at his home could be introduced into evidence. State v. Hoyle, 325 N.C. 232, 382 S.E.2d 752 (1989).

Adverse comments on defendant's failure to testify are impermissible.

Defendant was entitled to a new trial because the trial court erroneously overruled his objection to the prosecution's closing comments about defendant's decision not to testify in trial for felonious breaking or entering. The error was prejudicial and required a new trial. State v. Reid, 334 N.C. 551, 434 S.E.2d 193 (1993).

But, trial court did not err in allowing police officer's comments on murder defendant's decision to exercise her constitutional right to remain silent upon her arrest; the comments were elicited by the defense counsel and defense counsel repeatedly asked officer to explain his answers and did not object to, or move to strike the comments. State v. Jennings, 333 N.C. 579, 430 S.E.2d 188 (1993), cert. denied, 510 U.S. 1028, 114 S. Ct. 644, 126 L. Ed. 2d 602 (1994).

Right to Remain Silent Not Violated. — Where the State did not ask detective whether defendant exercised his right to remain silent, he only testified that defendant was read his rights and indicated he understood those rights and no specific inquiry or argument was made about defendant's silence, defendant's exercise of his right to remain silent therefore was not used against him and his constitutional rights were not violated. State v. Carter, 335 N.C. 422, 440 S.E.2d 268 (1994).

Where the prosecutor was directly responding to argument made by defendant relating to a specific piece of evidence and the argument did not relate to whether defendant himself sought to testify, it simply constituted a misstatement regarding the parties' relative rights to introduce the statement, not a comment on defendant's failure to testify. State v. Ratliff, 341 N.C. 610, 461 S.E.2d 325 (1995).

Comment on Prior Silence After Defendant Takes Stand. — With or without a *Miranda* warning, a defendant's right to remain silent is guaranteed by U.S. Const., Amend. V, as well as by this section. Any comment upon the exercise of this right, nothing else appearing, is impermissible. However, when a defendant chooses to testify in his own behalf, his U.S. Const., Amend. V right to remain silent must give way to the State's right to seek to determine, by way of impeachment, whether his prior silence is inconsistent with his trial testimony. The test is whether, under the circumstances at the time of arrest, it would have been natural for defendant to have asserted the same defense asserted at trial. State v. McGinnis, 70 N.C. App. 421, 320 S.E.2d 297 (1984).

Argument on Failure to Tell Police of Defense. — District attorney's question and argument to the jury as to defendant's failure to tell the police of his defense were prejudicial errors; since there was no eyewitness to the shooting other than defendant, and since his defense depended on the jury's acceptance of his version of the event, the State failed to demonstrate beyond a reasonable doubt that it was harmless to attack the credibility of his version by improper evidence, which improper evidence was reinforced by jury argument. State v. Hoyle, 325 N.C. 232, 382 S.E.2d 752 (1989).

Chemical analyses of blood or

breath are not within the protection of U.S. Const., Amends. V and XIV, or this section, as such chemical analyses are not evidence which is testimonial or communicative in nature. State v. White, 84 N.C. App. 111, 351 S.E.2d 828, cert. denied, 319 N.C. 227, 353 S.E.2d 404, appeal dismissed, 319 N.C. 409, 354 S.E.2d 887 (1987).

Defendant who, prior to his own indictment, gave testimony at codefendant's continuance hearing, placing himself in the company of the prosecuting witness on the evening in question, was not denied his privilege against self-incrimination, even though he was not represented by counsel or informed of his right against compulsory self-incrimination, despite the fact that codefendant's attorney, who had sought his testimony, was acting with the full complicity of the State, as defendant was not compelled to speak to his detriment. State v. Flowers, 318 N.C. 208, 347 S.E.2d 773 (1986).

Pre-arrest warrantless recording of defendant's incriminating statements through witness did not violate defendant's right to be free of unreasonable search and seizure under N.C. Const., Art. I, § 20, inasmuch as defendant had no legitimate expectation of privacy regarding a conversation he voluntarily maintained with a confederate; the recording did not violate defendant's right under this section to be free from compulsory self-incrimination because his participation in the conversation was wholly voluntary, albeit ill-advised, and did not violate defendant's right under this section to counsel because the conversation in question occurred during the initial investigation of defendant prior to his arrest. State v. Levan, 326 N.C. 155, 388 S.E.2d 429 (1990).

Right Not Violated. — Defendant's alleged "Hobson's choice" between asserting her privilege against self-incrimination and her right to testify on her own behalf was illusory where trial court's denial of defendant's motion for a continuance in noncapital indictment for murder of stepson did not force defendant to choose between two constitutional rights but to make a purely tactical decision as to whether it would be more advantageous to testify in this trial, in her capital trial, in both trials, or not at all; defendant would have faced the same dilemma regardless of which case was tried first since any incriminating statements made at the first trial could later be used against her at the second trial. State v. White, 340 N.C. 264, 457 S.E.2d 841 (1995).

B. Confessions.

Exclusion of Second Confession after Improper First Confession. — Neither section 19 nor this section of N.C. Const., Art. I required the suppression of a defendant's second confession, made after proper warnings and the defendant's voluntary waiver of his constitutional rights, when that confession followed an earlier confession which had to be excluded under Miranda v. Arizona, 384 U.S. 436, 86 S. Ct. 1602, 16 L. Ed. 2d 694 (1966). State v. Hicks, 333 N.C. 467, 428 S.E.2d 167 (1993).

Question of voluntariness must be determined by the total circumstances, etc. —

In accord with first paragraph in the main volume. See State v. Leak, 90 N.C. App. 351, 368 S.E.2d 430 (1988).

In determining whether a defendant's statement was in fact voluntarily and understandingly made, the court must consider the totality of the circumstances of the case and may not rely upon any one circumstance standing alone and in isolation. State v. Richardson, 70 N.C. App. 509, 320 S.E.2d 900 (1985), rev'd on other grounds, 316 N.C. 594, 342 S.E.2d 823 (1986).

Mental Condition as a Factor. — Though defendant's mental condition is a factor to be considered, that factor standing alone will not render an otherwise voluntary confession inadmissible. State v. Leak, 90 N.C. App. 351, 368 S.E.2d 430 (1988).

Where defendant contended that the four and one-half hour delay in taking him before a judicial official after service of warrants was a coercive factor which rendered his confession involuntary, but he did not show any causal connection between the confession and the delay, no constitutional provision required exclusion of his statement on this ground. State v. Leak, 90 N.C. App. 351, 368 S.E.2d 430 (1988).

Intoxication Held Not to Preclude Conclusion of Voluntariness. — Where officers did not begin questioning defendant until some two hours after a blood alcohol test, and one officer explicitly testified that defendant appeared sober during the interview and spoke rationally and coherently, and the trial court specifically found that defendant was not under the influence of alcohol during the interview, the fact that defendant may have experienced some lingering, mild intoxication at the time of the confession did not preclude the conclusion that he confessed voluntarily. State v. McKoy, 323 N.C. 1, 372 S.E.2d 12 (1988), death sentence vacated and remanded on other grounds, 494 U.S. 433, 110 S. Ct. 1227, 108 L. Ed. 2d 369 (1990).

Effect of Trial Court's Findings, etc. —

In accord with first paragraph in the main volume. See State v. Leak, 90 N.C. App. 351, 368 S.E.2d 430 (1988).

Admission of Confessions Upheld. —

Confession made by 14 year old defendant in murder case held voluntary. State v. Bunnell, 340 N.C. 74, 455 S.E.2d 426 (1995).

VI. WITNESS FEES, COSTS, ETC.

Assistance of a Pathologist. — Even though defendant's identity as the perpetrator of the crime charged was critical, and the state's case was built on circumstantial evidence, defendant failed to satisfy his burden of showing either that the assistance of a pathologist would have materially aided him in the preparation of his defense or that the lack thereof deprived him of a fair trial. State v. Moseley, 338 N.C. 1, 449 S.E.2d 412 (1994), cert. denied, — U.S. —, 115 S. Ct. 1815, 131 L. Ed. 2d 738 (1995).

Sec. 24. Right of jury trial in criminal cases.

CASE NOTES

I. In General.
II. Unanimous Verdict of Twelve.
III. Selection of Jurors.

I. IN GENERAL.

The defendant has an absolute constitutional right to plead not guilty and be tried by a jury. He should not and could not be punished for exercising that right. State v. Langford, 319 N.C. 340, 354 S.E.2d 523 (1987).

Trial as to Each Essential Element. —

It is fundamental that one charged with a crime in this state is entitled, as a matter of right, under both the federal and State Constitutions, to a jury trial as to every essential element of the crime charged. However, the punishment imposed is generally not an element of the crime. State v. Field, 75 N.C. App. 647, 331 S.E.2d 221, cert. denied and appeal dismissed, 315 N.C. 186, 337 S.E.2d 582 (1985).

The right to be tried by one's peers of the vicinage is subject to the ability to secure a fair trial; both defendant and the State are entitled to a fair trial, and a fair trial requires an impartial jury; where it appeared necessary to judge to remove the case to some neighboring county in order to secure a fair trial, such removal to a neighboring county did not violate the constitutional prohibition. State v. Chandler, 324 N.C. 172, 376 S.E.2d 728 (1989).

"Open Court" Not Applicable to Civil Proceedings. — This section is directed to an "open court" proceeding during a criminal conviction only, and it is not applicable to civil proceedings. WSOC Television, Inc. v. State ex rel. Att'y Gen., 107 N.C. App. 448, 420 S.E.2d 682, cert. denied, 333 N.C. 168, 424 S.E.2d 905 (1992).

Jury Trial May Not Be Waived after Plea of Not Guilty. —

The right to a jury trial is not only guaranteed by the Sixth Amendment to the United States Constitution, but under the North Carolina Constitution the right also can not be waived by a defendant who pleads not guilty. State v. Thompson, 118 N.C. App. 33, 454 S.E.2d 271 (1995).

Thoughtful and full deliberation in an effort to achieve unanimity has only a salutary effect on our judicial system: It tends to prevent arbitrary and capricious sentence recommendations. State v. McCarver, 341 N.C. 426, 462 S.E.2d 25 (1995).

A criminal defendant may not be punished at sentencing for exercising his constitutional right to trial by jury. State v. Cannon, 326 N.C. 37, 387 S.E.2d 450 (1990).

Where it can reasonably be inferred from the language of the trial judge that the sentence was imposed at least in part because defendant did not agree to a plea offer by the State and insisted on a trial by jury, defendant's constitutional right to trial by jury has been abridged, and a new sentencing hearing must result. State v. Cannon, 326 N.C. 37, 387 S.E.2d 450 (1990).

Defendant's Sentence Need Not Be Based on Unanimous Recommendation. — Neither Art. I, § 24, nor any other provision of the North Carolina Constitution requires that a defendant's sentence be based upon a unanimous recommendation of a jury. State v. Baldwin, 330 N.C. 446, 412 S.E.2d 31 (1992).

Jury Request to Review Testimony. — Both this section and § 15A-1233 require the trial court to summon all jurors into the courtroom before hearing and addressing a jury request to review testimony, and to exercise its discretion in denying or granting the request. Failure of the trial court to comply with these mandates entitles defendant to press these points on appeal, notwithstanding his failure to object at trial. State v. Ashe, 314 N.C. 28, 331 S.E.2d 652 (1985).

The trial judge's response to the jury's request to review certain testimony by sending a message to the jury through the bailiff, rather than by addressing the jury as a whole in open court, though erroneous, was not prejudicial to defendant. State v. McLaughlin, 320 N.C. 564, 359 S.E.2d 768 (1987).

Judge's Communication with Jury Via Written Notes. — Judge's communication with jury in the jury room via written notes violated the requirements of § 15A-1233(a); however, where the judge communicated with all jurors, his notes having been delivered to the jury as a whole, there was no violation of the North Carolina Constitution, and defendant failed to show other prejudice. State v. Colvin, 92 N.C. App. 152, 374 S.E.2d 126 (1988), cert. denied, 324 N.C. 249, 377 S.E.2d 758 (1989).

Conversation Between Court and Juror. — Where the record established that the substance of a conversation between a juror and the court related to the juror's having "overheard something about the case," where the court excused the juror, and to insure that "no one should be suspicious" about his ability to be fair and impartial, this juror was removed from the case prior to deliberations, and where no other juror indicated that he or she had overheard anything about the case, the conversation between the court and the juror could not have influenced the verdict. State v. Harrington, 335 N.C. 105, 436 S.E.2d 235 (1993).

Inquiry by Trial Judge as to Jury's Numerical Split. —

In accord with third paragraph in the main volume. See State v. Fowler, 312 N.C. 304, 322 S.E.2d 389 (1984).

Inquiries into the division of the jury are not a per se violation of this section when the trial court makes it clear that it does not desire to know whether the majority is for conviction or acquittal. Such inquiries are not inherently coercive, and without more do not violate the right to trial by jury guaranteed by the North Carolina Constitution. The appropriate standard is whether in the totality of the circumstances the inquiry is coercive. State v. Fowler, 312 N.C. 304, 322 S.E.2d 389 (1984).

Trial judge's questions about the numerical division of a jury do not constitute a per se violation of this section. Rather, the proper analysis is whether, in considering the totality of the circumstances, the inquiry was coercive. State v. Bussey, 321 N.C. 92, 361 S.E.2d 564 (1987).

The disjunctive phrasing of the jury instruction was not a fatal ambiguity which resulted in a nonunanimous jury verdict. State v. Oliver, 343 N.C. 202, 470 S.E.2d 16 (1996).

Polling of Jurors Was Proper. — Where each of the jurors individually was told the charges for which the jury had returned a guilty verdict and was asked whether this was their verdict and whether they still assented to the verdict there was no error in the manner in which the jury was polled. State v. Ramseur, 338 N.C. 502, 450 S.E.2d 467 (1994).

Judge's Warning to Restrict Public Egress Was Proper. — Where trial judge informed those in the courtroom that he was concerned that the jury would be distracted by the movement of spectators in and out of the room and where he consequently warned them that if they wished to leave the courtroom, they should do so immediately, for they would not be allowed to do so after closing arguments began, barring an emergency, the order was not a denial of a public trial in violation of this section since judge did not vacate the courtroom nor bar the courtroom door without due warning to those within and without, and since the judge was authorized under § 15A-1034(a) to impose reasonable limitations on access to the courtroom.

State v. Clark, 324 N.C. 146, 377 S.E.2d 54 (1989).

The bifurcated procedure that the legislature has established for impaired driving cases, with the jury determining whether § 20-138.1 has been violated and the judge determining the length of punishment required under § 20-179, is constitutional. State v. Field, 75 N.C. App. 647, 331 S.E.2d 221, cert. denied and appeal dismissed, 315 N.C. 186, 337 S.E.2d 582 (1985).

Because the factors before the trial judge in determining sentencing are not elements of the offense, their consideration for purposes of sentencing is a function of the judge and is not susceptible to constitutional challenge based upon either the right to a jury trial under U.S. Const., Amend. VI or this section. State v. Denning, 316 N.C. 523, 342 S.E.2d 855 (1986), involving sentencing under § 20-179 for impaired driving.

Increase in Punishment Based on Aggravating Factor. — Trial judge's increasing of defendant's punishment under the Safe Roads Act of 1983 after a finding of a grossly aggravating factor, namely, that defendant had a prior conviction for a similar offense within seven years, did not in any way deprive defendant of his right to jury trial. State v. Denning, 76 N.C. App. 156, 332 S.E.2d 203 (1985), modified and aff'd, 316 N.C. 523, 342 S.E.2d 855 (1986).

Determination of Appropriate Sentence. — North Carolina courts have long adhered to the principle forbidding a trial court from improperly considering the defendant's exercise of her rights under this provision of the Constitution as an influential factor in determining the appropriate sentence. State v. Pavone, 104 N.C. App. 442, 410 S.E.2d 1 (1991).

Applied in State v. McEntire, 71 N.C. App. 720, 323 S.E.2d 439 (1984); State v. Britt, 93 N.C. App. 126, 377 S.E.2d 79 (1989); State v. Patterson, 332 N.C. 409, 420 S.E.2d 98 (1992); State v. Honaker, 111 N.C. App. 216, 431 S.E.2d 869 (1993).

Cited in State v. Avery, 315 N.C. 1, 337 S.E.2d 786 (1985); State v. Gilliam, 317 N.C. 293, 344 S.E.2d 783 (1986); State v. Belton, 318 N.C. 141, 347 S.E.2d 755 (1986); State v. Davis, 86 N.C. App. 25, 356 S.E.2d 607 (1987); State v. Kennedy, 320 N.C. 20, 357 S.E.2d 359 (1987); State v. Mitchell, 321 N.C. 650, 365 S.E.2d 554 (1988); State v. Godwin, 95 N.C. App. 565, 383 S.E.2d 234 (1989); State v. Hope, 96 N.C. App. 498, 386 S.E.2d 224 (1989); Ragan v. County of Alamance, 98 N.C. App. 636, 391 S.E.2d 825 (1990); State v. Thomas, 329 N.C. 423, 407 S.E.2d 141 (1991); In re Alamance County Ct. Facilities, 329 N.C. 84, 405 S.E.2d 125 (1991); State v. Robinson, 330 N.C. 1, 409 S.E.2d 288 (1991); State v. Lyons, 330 N.C. 298, 412 S.E.2d 308 (1991); State v. Ainsworth, 109 N.C. App. 136, 426 S.E.2d 410 (1993); State v. Harris, 333 N.C. 544, 428 S.E.2d 823 (1993); State v. Nelson, 341 N.C. 695, 462 S.E.2d 225 (1995).

II. UNANIMOUS VERDICT OF TWELVE.

Verdict Unaffected by Subsequent Change of Mind. — If the jury is unanimous at the time the verdict is returned, the fact that some of them change their minds at any time thereafter is of no consequence; the verdict rendered remains valid and must be upheld. State v. Black, 328 N.C. 191, 400 S.E.2d 398 (1991).

Submission of an issue to the jury in the disjunctive is reversible error if it renders the issue ambiguous and thereby prevents the jury from reaching a unanimous verdict. State v. Diaz, 317 N.C. 545, 346 S.E.2d 488 (1986).

A verdict of guilty following submission in the disjunctive of two or more possible crimes to the jury in a single issue is ambiguous and therefore fatally defective. State v. Diaz, 317 N.C. 545, 346 S.E.2d 488 (1986).

By instructing the jury that it could find defendant guilty of trafficking in marijuana if it found that defendant knowingly possessed or knowingly transported 10,000 pounds or more of marijuana, the trial judge submitted two possible crimes to the jury, as the jury could find defendant guilty if it found that he committed either or both of the crimes submitted to it. Thus, the jury's verdict of guilty was fatally defective because it was ambiguous, depriving defendant of his constitutional right to be convicted by a unanimous jury. State v. Diaz, 317 N.C. 545, 346 S.E.2d 488 (1986).

The trial court committed reversible error in instructing the jury that it could convict the defendant of first degree sex offense if it found that he forced the victim to perform either fellatio or anal intercourse, as defendant had a constitutional right to be convicted by the unanimous verdict of a jury in open court, and under this instruction there was no way to tell whether the defendant was convicted of second degree sexual offense because the jury unanimously agreed that the defendant engaged in fellatio, anal intercourse, both fellatio and anal intercourse, or whether some members of the jury found that he engaged in fellatio but not anal intercourse, and some found that he engaged in anal intercourse but not fellatio. State v. Callahan, 86 N.C. App. 88, 356 S.E.2d 403 (1987), aff'd, 93 N.C. App. 579, 378 S.E.2d 812 (1989).

Instructions in a disjunctive form on the charge of maliciously assaulting in a secret manner were fatally ambiguous, thereby resulting in an uncertain verdict in violation of defendant's right to a unanimous verdict. State v. Lyons, 330 N.C. 298, 410 S.E.2d 906 (1991).

Trial judge correctly instructed jury that it could find immoral, improper, or indecent liberties with a child upon a finding that defendant either improperly touched his son or induced his son to touch him; the instruction did not permit conviction by less than a unanimous verdict. State v. Hartness, 326 N.C. 561, 391 S.E.2d 177 (1990).

Right to Poll Jury. —

The right to a poll of the jury in criminal actions is firmly established by this section and by statute. State v. Black, 328 N.C. 191, 400 S.E.2d 398 (1991).

The predominant purpose of the poll, etc. —

The rationale behind requiring that any polling of the jury be before dispersal is to ensure that nothing extraneous to the jury's deliberations can cause any of the jurors to change their minds. State v. Black, 328 N.C. 191, 400 S.E.2d 398 (1991).

The purpose of polling the jury is to ensure that the jurors unanimously agree with and consent to the verdict at the time it is rendered. State v. Black, 328 N.C. 191, 400 S.E.2d 398 (1991).

III. SELECTION OF JURORS.

Juror May Still Serve If Juror Can Lay Aside Opinion. — Notwithstanding a juror's opinion as to how a case should be decided, a juror may still serve if the court determines that the juror can lay aside his impression or opinion and render a verdict based on the evidence presented in court. State v. Mebane, 106 N.C. App. 516, 418 S.E.2d 245, cert. denied, 332 N.C. 670, 424 S.E.2d 414 (1992).

Petit juries must be drawn from a source fairly representative of the community; however, petit juries actually chosen need not mirror the community nor reflect the various distinctive groups in the population. State v. Davis, 325 N.C. 607, 386 S.E.2d 418 (1989), cert. denied, 496 U.S. 905, 110 S. Ct. 2587, 110 L. Ed. 2d 268 (1990).

Evidence of Racial Exclusion Held Insufficient. —

The defendant failed to make a prima facie case of racially motivated peremptory challenges, where the State was willing to accept 40% of the blacks tendered. State v. Abbott, 320 N.C. 475, 358 S.E.2d 365 (1987).

Defendant found guilty of murder and robbery failed to establish a prima facie case of racial discrimination in the State's use of its peremptory challenges where the State's questions during voir dire focused on the prospective juror's feelings about capital punishment and the age of the juror, or his or her children, as compared with defendant's age; the venire persons were brought into the courtroom individually, so neither defendant nor the State knew how many black citizens were present in the venire or whether a black citizen would be examined next, and three of the first four jurors seated were black, as were both defendant and the victim, thus diminishing the likelihood that racial issues were inextricably bound up with the conduct of the trial. State v. Davis, 325 N.C. 607, 386 S.E.2d 418 (1989), cert. denied, 496 U.S. 905, 110 S. Ct. 2587, 110 L. Ed. 2d 268 (1990).

A small sample of 40 jurors from the master list of jurors of a county alone was insufficient to establish a systematic exclusion of blacks from the jury pool. State v. McNeill, 326 N.C. 712, 392 S.E.2d 78 (1990).

Challenge of Jurors for Opposition to Death Penalty. —

Death qualification of jurors does not violate this Article. State v. Smith, 320 N.C. 404, 358 S.E.2d 329 (1987).

"Death qualifying" juries in capital cases violates neither the United States Constitution nor the North Carolina Constitution. State v. Strickland, 321 N.C. 31, 361 S.E.2d 882 (1987).

It was not error under N.C. Const., Art. I, § 19 or this section for the prosecution to use its peremptory challenges to excuse veniremen who had qualms about the death penalty but were not excludable pursuant to Witherspoon v. Illinois, 391 U.S. 510, 88 S. Ct. 1770, 20 L. Ed. 2d 776, rehearing denied, 393 U.S. 898, 89 S. Ct. 67, 61 L. Ed. 2d 186 (1968).

State v. Allen, 323 N.C. 208, 372 S.E.2d 855 (1988), sentence vacated and remanded for further consideration at 494 U.S. 1021, 110 S. Ct. 1463, 108 L. Ed. 2d 601 (1990), in light of McKoy v. North Carolina, 494 U.S. 433, 110 S. Ct. 1227, 108 L. Ed. 2d 369 (1990), rehearing denied, 507 U.S. 1046, 113 S. Ct. 1885, 123 L. Ed. 2d 503 (1993).

The presence on the jury of a judge who had earlier presided over the defendant's arraignment, granted the defendant time to file motions and initiate discovery, and set the case for trial, violated the defendant's right to trial by a jury of 12, a right which is inalienable in North Carolina, and denied him liberty without due process of law, and the fact that neither party challenged the judge's presence on the jury was irrelevant. Cox v. Turlington, 648 F. Supp. 1553 (E.D.N.C. 1986).

Sec. 25. Right of jury trial in civil cases.

CASE NOTES

I. In General.
II. Specific Proceedings.

I. IN GENERAL.

This Section Applicable to Actions Respecting Property Only. — Though this section contains no such qualifications, it has been construed to apply only to actions respecting property in which the right to a jury trial existed either at common law, or by statute before the 1868 Constitution became operative; for actions created since then, the right to a jury trial depends upon statutory authority. State ex rel. Rhodes v. Simpson, 91 N.C. App. 517, 372 S.E.2d 312 (1988), rev'd on other grounds, 325 N.C. 514, 385 S.E.2d 329 (1989).

Section Compared to N.C. Const., Art. IV, § 13. — There is not a conflict between this section and N.C. Const., Art. IV, § 13, but Art. IV, § 13 is more comprehensive. Faircloth v. Beard, 320 N.C. 505, 358 S.E.2d 512 (1987).

This section and N.C. Const., Art. IV, § 13 must be read in conjunction with one another. N.C. Const., Art. IV, § 13 merely establishes the form and procedure for the trial of all civil actions, including the procedure of having issues of fact decided by a jury in what were formerly equity proceedings; to determine whether there exists a constitutional right to trial by jury of a particular cause of action, one looks to this section, which ensures that there is a right to trial by jury where the underlying cause of action existed at the time of adoption of the 1868 Constitution, regardless of whether the action was formerly a proceeding in equity. Kiser v. Kiser, 325 N.C. 502, 385 S.E.2d 487 (1989).

For examination of historical development of the right to trial by jury, see Kiser v. Kiser, 325 N.C. 502, 385 S.E.2d 487 (1989).

But Only in Certain Cases. —

The right to trial by jury as provided for by this section applies only to cases in which the prerogative existed at common law or was procured by statute at the time the Constitution was adopted. The right does not apply to cases in which a right and remedy were thereafter created by statute. State v. Morris, 103 N.C. App. 246, 405 S.E.2d 351 (1991).

The relevant date for determining the scope of the constitutional right to jury trial, etc.

In accord with the main volume. See State v. Morris, 103 N.C. App. 246, 405 S.E.2d 351 (1991).

Compulsory Reference. —

Although when a court orders a compulsory reference, a party preserves his right to trial by complying with the procedural steps outlined in § 1A-1, Rule 53, the party is entitled to trial by jury only if the evidence before the reference was sufficient to raise an issue of fact. Fauchette v. Zimmerman, 79 N.C. App. 265, 338 S.E.2d 804 (1986).

Admission of hearsay evidence does not violate the confrontation clause when declarant is unavailable to testify and his statement bears adequate indicia of reliability. Thus, in a trial for taking indecent liberties with a four-year-old child, admission of evidence admissible under established exception to the hearsay rule did not violate defendant's right of confrontation under this section. State v. Jones, 89 N.C. App. 584, 367 S.E.2d 139 (1988).

There is no constitutional impediment to arbitration agreements. Miller v. Two State Constr. Co., 118 N.C. App. 412, 455 S.E.2d 678 (1995).

An agreement to arbitrate a dispute is not an unenforceable contract requiring waiver of a jury; thus, the trial court erred in concluding that because arbitration provision did not provide for trial of facts by a jury that it was unconscionable and unenforceable under § 22B-10, and in violation of N.C. Const., Art. I, §§ 18 and 25. Miller v. Two State Constr. Co., 118 N.C. App. 412, 455 S.E.2d 678 (1995).

Applied in Williams & Michael, P.A. v. Kennamer, 71 N.C. App. 215, 321 S.E.2d 514 (1984); Jackson v. Lundy Packing Co., 72 N.C. App. 337, 324 S.E.2d 290 (1985); Phillips v. Phillips, 73 N.C. App. 68, 326 S.E.2d 57 (1985); In re McCarroll, 313 N.C. 315, 327 S.E.2d 880 (1985).

Cited in Dowat, Inc. v. Tiffany Corp., 83 N.C. App. 207, 349 S.E.2d 610 (1986); Ragan v. County of Alamance, 98 N.C. App. 636, 391 S.E.2d 825 (1990); In re Alamance County Ct. Facilities, 329 N.C. 84, 405 S.E.2d 125 (1991).

II. SPECIFIC PROCEEDINGS.

Injunction Action Under CAMA and Dredge and Fill Act. — Trial court erred in granting defendant's demand for a jury trial in state-initiated proceeding seeking mandatory injunctive relief under Coastal Area Management Act (CAMA) and the Dredge and Fill Act for the removal of fill material on defendant's property; an action such as this neither existed at common law nor by statute at the time of the adoption of the Constitution of 1868; therefore, this section did not apply. State ex rel. Rhodes v. Simpson, 325 N.C. 514, 385 S.E.2d 329 (1989).

Actions under ERISA. — Preemptive effect of the Employee Retirement Income Security Act of 1974 (ERISA), 29 U.S.C. § 1001 et seq., does not abridge the right to a jury trial under this section in an action to recover benefits due under 29 U.S.C. § 1132(a)(1)(B). Overcash v. Blue Cross & Blue Shield, 94 N.C. App. 602, 381 S.E.2d 330 (1989).

The right to a jury trial under the law of this State does not conflict with any of the substantive provisions of the Employee Retirement Income Security Act; therefore, State law would control and plaintiff was entitled to have factual controversy in his action for benefits due under an insurance contract submitted to a jury. Overcash v. Blue Cross & Blue Shield, 94 N.C. App. 602, 381 S.E.2d 330 (1989).

Equitable Distribution Action. — No right to bring an action for equitable distribution of marital property existed prior to the adoption of the equitable distribution statutes, §§ 50-20 and 50-21, and the language of the statutes themselves create no new right to trial by jury; therefore, there is no right to trial by jury for such an action under the Constitution of North Carolina. Kiser v. Kiser, 325 N.C. 502, 385 S.E.2d 487 (1989).

Appraisal. — Plaintiff's right under the North Carolina Constitution to trial by jury was not abridged by the appraisal clause. Bentley v. North Carolina Ins. Guar. Ass'n, 107 N.C. App. 1, 418 S.E.2d 705 (1992).

Notwithstanding this provision, the North Carolina Supreme Court has repeatedly approved appraisal as a means of settling the single issue of amount of loss sustained by an insured. Bentley v. North Carolina Ins. Guar. Ass'n, 107 N.C. App. 1, 418 S.E.2d 705 (1992).

Condemnation. — Where a matter was called for hearing pursuant to § 136-108 in a condemnation action with no jury, this hearing did not infringe upon the landowner's right to a jury trial as provided by the North Carolina and United States Constitutions. DOT v. Wolfe, 116 N.C. App. 655, 449 S.E.2d 11 (1994).

Shareholder's Derivative Actions. — Although a litigant's right to have a jury try issues of fact concerning the merits of the action initiated by the filing of a derivative suit complaint is guaranteed by the Constitution of North Carolina, the procedure required by former § 55-55(c) did not exist before the adoption of the Constitution of 1868, and therefore no State constitutional right exists to a trial by jury of factual issues that might arise during the course of the proceedings required under this section. Alford v. Shaw, 327 N.C. 526, 398 S.E.2d 445 (1990).

No Right to Jury Trial Under Coastal Area Management Act. — In an action brought by State seeking preliminary injunction to require removal of sign and compliance with Coastal Area Management Act (CAMA), sign company was not entitled to trial by jury since it had not asserted "right and remedy" existing when State Constitution was adopted and since CAMA did not provide statutory right to jury trial. State ex rel.

Rhodes v. Givens, 101 N.C. App. 695, 400 S.E.2d 745 (1991).

Section 18B-504 does not preserve the right to trial by jury. State v. Morris, 103 N.C. App. 246, 405 S.E.2d 351 (1991).

Neither § 90-112 nor § 90-112.1 creates a right to trial by jury. State v. Morris, 103 N.C. App. 246, 405 S.E.2d 351 (1991).

An action under § 90-112.1 is in the nature of an action for replevin and is in essence a civil action; as such, the right to a jury trial, if any, is governed by this section of the Constitution, and thus, defendant was not entitled to a trial by jury for her remission action. State v. Honaker, 111 N.C. App. 216, 431 S.E.2d 869 (1993).

Sec. 26. Jury service.

Legal Periodicals. — For article, "Race-Based Peremptories No Longer Permitted in Civil Trials: Jackson v. Housing Authority of High Point," see 67 N.C.L. Rev. 1262 (1989).

CASE NOTES

Intent of Section. — This section is intended to protect the integrity of the judicial system, not just the reliability of the conviction obtained in a particular case. State v. Cofield, 320 N.C. 297, 357 S.E.2d 622 (1987).

This section does more than protect individuals from unequal treatment; the people of this State have declared in this provision that they will not tolerate the corruption of their juries by racism, sexism, and similar forms of irrational prejudice. State v. Cofield, 320 N.C. 297, 357 S.E.2d 622 (1987).

The spirit of this section requires that all grand jurors be considered for appointment as grand jury foreman. State v. Cofield, 324 N.C. 452, 379 S.E.2d 834 (1989).

Selection of Grand Jury Foreman Must Meet Racially Neutral Standard. — A method of selecting a grand jury foreman that meets the racially neutral standard must ensure that all grand jurors are considered by the presiding judge for his selection and that his selection be made on a racially neutral basis. State v. Cofield, 324 N.C. 452, 379 S.E.2d 834 (1989), holding, however, that this holding applies only to the case at hand and cases in which the indicting grand jury's foreman is selected after the certification date of the opinion of the case at hand.

Racial discrimination in the selection of a grand jury foreman from a panel of grand jurors selected in a nondiscriminatory manner violates this section and N.C. Const., Art. I, § 19. State v. Cofield, 320 N.C. 297, 357 S.E.2d 622 (1987).

A black defendant may make out a prima facie case of racial discrimination in the grand jury foreman's selection by showing either (1) that the selection procedure itself was not racially neutral, or (2) that for a substantial period in the past, relatively few blacks have served in the position of foreman even though a substantial number have been selected to serve as members of grand juries. The State may rebut such a prima facie case on remand by offering evidence that the process used in selecting the grand jury foreman was in fact racially neutral. State v. Cofield, 320 N.C. 297, 357 S.E.2d 622 (1987).

To make out a prima facie case of discrimination, a defendant need only show that the relevant circumstances raise an inference that the prosecutor used peremptory challenges to remove potential jurors solely because of their race. State v. Quick, 341 N.C. 141, 462 S.E.2d 186 (1995).

Evidence to Show Pretextual Nature of Prosecutor's Explanation. — In North Carolina in a claim of racially discriminatory use of peremptory challenges, the defendant may put on additional evidence before the trial court's final ruling to prove that the prosecutor's explanations are pretextual. State v. Williams, 339 N.C. 1, 452 S.E.2d 245 (1994), cert. denied, — U.S. —, 116 S. Ct. 109, 133 L. Ed. 2d 61 (1995).

Disparate Treatment of Prospective Jurors Not Dispositive. — Although the prosecutor claimed to have struck one of the black jurors because of her family's involvement with crime, another because of inconsistent statements and a third because of the juror's views on the death penalty, but, according to defendant, the prosecutor passed two white jurors with criminal backgrounds, one white juror who made inconsistent statements and another who expressed reservations about imposing the death penalty, disparate treatment of prospective jurors was not necessarily dispositive on the issue of discriminatory intent. State v. Williams, 339 N.C. 1, 452 S.E.2d 245 (1994), cert. denied, — U.S. —, 116 S. Ct. 109, 133 L. Ed. 2d 61 (1995).

Circumstances Collectively Showed Discrimination. — After a black woman was seated for examination during voir dire, the prosecutor asked the clerk if there was a white male out there; the prosecutor briefly questioned the woman and then peremptorily challenged her; the woman was excused and a white man was called for examination and later became the jury foreperson. Standing alone, the prosecutor's peremptory challenge of the black woman would not amount to a prima facie showing of purposeful discrimination. The prosecutor's question of the clerk prior to his examination of the black woman, however, is a relevant circumstance which, when combined with the prosecutor's subsequent peremptory challenge of the black woman, raises an inference of purposeful discrimination on the prosecutor's part thereby establishing a prima facie showing. State v. Hall, 104 N.C. App. 375, 410 S.E.2d 76 (1991).

Peremptory Challenge Test Based on Race Same as Federal Test. — The test to determine whether peremptory challenges were exercised in a racially discriminatory manner is the same under the North Carolina Constitution as it is under the United States Constitution. State v. Floyd, 343 N.C. 101, 468 S.E.2d 46 (1996).

Peremptory Challenges Based on Race Proscribed. — This section proscribes peremptory challenges to jurors in civil cases as well as criminal cases on the basis of race. Jackson v. Housing Auth., 321 N.C. 584, 364 S.E.2d 416 (1988).

Race or Religion of Defendant Different from Excluded Juror. — Discrimination in selecting juries so strongly taints the judicial system that any proceeding in which it appears is fatally flawed; for this reason, the fact that the defendant's race or religion differs from the excluded person's is irrelevant. State v. Eason, 336 N.C. 73, 445 S.E.2d 917 (1994), cert. denied, — U.S. —, 115 S. Ct. 764, 130 L. Ed. 2d 661 (1995).

Peremptory Challenges Upheld. — In a capital case, peremptory challenges to 5 of 6 potential black jurors were upheld where the State met its burden of coming forward with neutral, nonracial explanations for each peremptory challenge. State v. Robinson, 330 N.C. 1, 409 S.E.2d 288 (1991).

No purposeful racial discrimination occurred in the peremptory challenges of black jurors where trial court's ruling was supported by the trial court's findings of fact, which were supported by the record. State v. Thomas, 329 N.C. 423, 407 S.E.2d 141 (1991).

The defendant did not make a prima facie showing of racially motivated peremptory challenges where the State accepted seven of the 17 black veniremen tendered and the majority of the jury which tried the defendant was black. State v. Allen, 323 N.C. 208, 372 S.E.2d 855 (1988), sentence vacated and remanded for further consideration at 494 U.S. 1021, 110 S. Ct. 1463, 108 L. Ed. 2d 601 (1990), in light of McKoy v. North Carolina, 494 U.S. 433, 110 S. Ct. 1227, 108 L. Ed. 2d 369 (1990), rehearing denied, 507 U.S. 1046, 113 S. Ct. 1885, 123 L. Ed. 2d 503 (1993).

Defendant, found guilty of murder and robbery, failed to establish a prima facie case of racial discrimination in the State's use of its peremptory challenges, where the State's questions during voir dire focused on the prospective juror's feelings about capital punishment and the age of the juror, or his or her children, as compared with defendant's age; the venire persons were brought into the courtroom individually, so neither defendant nor the State knew how many black citizens were present in the venire or whether a black citizen would be examined next; and three of the first four jurors seated were black, as were both defendant and the victim, thus diminishing the likelihood that racial issues were inextricably bound up with the conduct of the trial. State v. Davis, 325 N.C. 607, 386 S.E.2d 418 (1989), cert. denied, 496 U.S. 905, 110 S. Ct. 2587, 110 L. Ed. 2d 268 (1990).

Defendant failed to establish a prima facie case of purposeful discrimination in selection of the jury where the jury consisted of ten white jurors and two black jurors, the only peremptory challenge exercised by the prosecutor excused a black man from the jury, but the prosecutor also accepted the two women who were the other black members of the jury venire, he accepted one at the same time he challenged the black male juror, indicating that he was not attempting to strike all blacks, and he did not move to strike any jurors for cause, thus, accepting 66% of the black potential jurors. State v. Ross, 338 N.C. 280, 449 S.E.2d 556 (1994).

The prosecutor's peremptory excusal of two of four black jurors in a case involving sexual offenses against a white woman by a black man was not sufficient, standing alone, to establish a prima facie case of racial discrimination and require the prosecutor to come forward with race-neutral explanations. State v. Quick, 341 N.C. 141, 462 S.E.2d 186 (1995).

Opposition to Capital Punishment on Religious Grounds. — Where the record established beyond a doubt that juror was excused, not because of his choice of religion, but because of his inability to follow the law regarding his duties as a juror, the fact that the prospective juror's religion provided the basis for his views in opposition to the death penalty did not alter the propriety of excluding him for cause. State v. Davis, 325 N.C. 607, 386 S.E.2d 418 (1989), cert. denied, 496 U.S. 905, 110 S. Ct. 2587, 110 L. Ed. 2d 268 (1990).

Where potential juror, who was a Jehovah's Witness, was stricken because of reservation about the death penalty and another prospective juror stated that he had no reservations which might impair his serving on the jury, and he was chosen to sit, there was sufficient support for the conclusion that potential juror removed from the jury because of her reservations about the death penalty, not because of her religious affiliation. State v. Eason, 336 N.C. 73, 445 S.E.2d 917 (1994), cert. denied, — U.S. —, 115 S. Ct. 764, 130 L. Ed. 2d 661 (1995).

Violation of Defendant's Rights Was Not Shown. — Where, although the State did not outline a profile or criteria for selecting jurors, it was obvious from the record that it would strike jurors who had connections to the defendants or to a principal State's witness or whom it believed would be prejudicial against the State, the record did not reflect that the assistant district attorney made any comments indicating a purpose to discriminate, and there was no transcript of the jury's voir dire and there was incomplete information on the racial composition of the jury venire and the jury, the defendants did not show that the trial judge violated defendant's rights under either the federal or State constitutions by overruling their objections to the State's use of peremptory challenges. State v. Cannon, 92 N.C. App. 246, 374 S.E.2d 604 (1988), rev'd on other grounds, 326 N.C. 37, 387 S.E.2d 450 (1989).

Applied in State v. Wiggins, 334 N.C. 18, 431 S.E.2d 755 (1993).

Stated in State v. Crandell, 322 N.C. 487, 369 S.E.2d 579 (1988); State v. Smith, 328 N.C. 99, 400 S.E.2d 712 (1991); State v. Glenn, 333 N.C. 296, 425 S.E.2d 688 (1993).

Cited in State v. Agudelo, 89 N.C. App. 640, 366 S.E.2d 921 (1988); State v. Payne, 327 N.C. 194, 394 S.E.2d 158 (1990); State v. Miller, 339 N.C. 663, 455 S.E.2d 137, rehearing denied, 340 N.C. 118, 458 S.E.2d 183 (1995).

Sec. 27. Bail, fines, and punishments.

CASE NOTES

I. In General.
II. Particular Statutes.
III. Illustrative Cases.

I. IN GENERAL.

The Department of Correction has a duty to provide adequate medical care to inmates in its custody, and that duty is of such great importance that the state cannot avoid liability by contracting with someone else to perform it. Medley v. North Carolina Dep't of Cor., 330 N.C. 837, 412 S.E.2d 654 (1992).

Peremptory instruction on nonstatutory mitigating circumstances which required the jury to find both that the circumstances existed and that the circumstances had mitigating value did not preclude the sentencer from considering relevant mitigating evidence in violation of the Constitution; the Constitution does not require that the sentencing jury “find” each circumstance which the court submits as potentially mitigating, but requires only that the sentencer be permitted to consider any relevant mitigating evidence. State v. Huff, 325 N.C. 1, 381 S.E.2d 635 (1989), vacated and remanded for further consideration at 497 U.S. 1021, 110 S. Ct. 3266, 111 L. Ed. 2d 777 (1990) in light of McKoy v. North Carolina, 494 U.S. 433, 110 S. Ct. 1227, 108 L. Ed. 2d 369 (1990), death sentence vacated, remanded for new capital sentencing proceeding, State v. Huff, 328 N.C. 532, 402 S.E.2d 577 (1991).

Applied in State v. Ford, 71 N.C. App. 748, 323 S.E.2d 358 (1984); State v. Moseley, 338 N.C. 1, 449 S.E.2d 412 (1994), cert. denied, — U.S. —, 115 S. Ct. 1815, 131 L. Ed. 2d 738 (1995).

Quoted in State v. O'Neal, 108 N.C. App. 661, 424 S.E.2d 680 (1993).

Cited in Cinema I Video, Inc. v. Thornburg, 83 N.C. App. 544, 351 S.E.2d 305 (1986); State v. Robbins, 319 N.C. App. 465, 356 S.E.2d 279 (1987); State v. Green, 321 N.C. 594, 365 S.E.2d 587 (1988); State v. Degree, 322 N.C. 302, 367 S.E.2d 679 (1988); State v. Artis, 325 N.C. 278, 384 S.E.2d 470 (1989); Hawkins v. Hawkins, 101 N.C. App. 529, 400 S.E.2d 472 (1991); State v. Robinson, 330 N.C. 1, 409 S.E.2d 288 (1991); State v. Jennings, 333 N.C. 579, 430 S.E.2d 188 (1993); State v. Fisher, 336 N.C. 684, 445 S.E.2d 866 (1994), cert. denied, — U.S. —, 115 S. Ct. 768, 130 L. Ed. 2d 665 (1995); State v. Williams, 339 N.C. 1, 452 S.E.2d 245 (1994), cert. denied, — U.S. —, 116 S. Ct. 109, 133 L. Ed. 2d 61 (1995); State v. Robinson, 342 N.C. 74, 463 S.E.2d 218 (1995); State v. Best, 342 N.C. 502, 467 S.E.2d 45 (1996).

II. PARTICULAR STATUTES.

Death Penalty. — The State Supreme Court reaffirmed its position that the death penalty statute does not violate the Eighth and Fourteenth Amendments to the United States Constitution and N.C. Const., Art. I, § 19 and this section. State v. McHone, 334 N.C. 627, 435 S.E.2d 296 (1993), cert. denied, — U.S. —, 114 S. Ct. 1577, 128 L. Ed. 2d 220 (1994).

Sections 14-190.1, 14-190.13, 14-190.16 and 14-190.17 are constitutional as drawn; while potentially beyond constitutional bounds if improperly applied, these sections are not so substantially overbroad as to require constitutional invalidation on their face. Cinema I Video, Inc. v. Thornburg, 320 N.C. 485, 358 S.E.2d 383 (1987).

III. ILLUSTRATIVE CASES.

Imposition of two consecutive life sentences did not constitute cruel and unusual punishment in violation of the State Constitution, where the defendant was convicted of four first-degree burglaries, three first-degree rapes, and eight first-degree sexual offenses. The sentence imposed was authorized under the statutes, and the sentence was not disproportionate to the crimes committed. State v. Woodard, 102 N.C. App. 687, 404 S.E.2d 6 (1990), cert. denied, 329 N.C. 504, 407 S.E.2d 550 (1991).

Mandatory Life Sentence. — Mandatory life sentence for first degree sexual offense does not constitute cruel and unusual punishment under the State or federal Constitution. Supreme Court of North Carolina has repeatedly rejected argument that a life sentence for first degree sexual offense is cruel and unusual punishment. State v. Norman, 100 N.C. App. 660, 397 S.E.2d 647 (1990).

Referral of Bail Setting to Another Judicial Officer Not Wrongful Confinement. — Where the defendant was taken before a judicial officer for the setting of bail within a reasonable time, although the magistrate may have erred at that point by referring the defendant's case to another judicial officer for the setting of bail rather than setting reasonable bail himself, the error did not make the defendant's temporary further confinement an unreasonable seizure or “wrongful confinement” in any constitutional sense so as to necessitate suppression of his confession. State v. Simpson, 320 N.C. 313, 357 S.E.2d 332 (1987), cert. denied, 485 U.S. 963, 108 S. Ct. 1230, 99 L. Ed. 2d 430 (1988).

Sec. 28. Imprisonment for debt.

CASE NOTES

I. In General.

I. IN GENERAL.

For an order of restitution to be valid it must be related to the criminal act for which defendant was convicted, or else the provision may run afoul of the constitutional provision prohibiting imprisonment for debt. State v. Froneberger, 81 N.C. App. 398, 344 S.E.2d 344 (1986).

Cited in Alexander v. Johnson, 742 F.2d 117 (4th Cir. 1984).

Sec. 32. Exclusive emoluments.

Legal Periodicals. — For note on the six year statutory bar to products liability actions, in light of Tetterton v. Long Manufacturing Co., 314 N.C. 44, 332 S.E.2d 67 (1985), see 64 N.C.L. Rev. 1157 (1986).

For note, "Municipal Ownership of Cable Television Systems: Madison Cablevision, Inc. v. City of Morganton," see 68 N.C.L. Rev. 1295 (1990).

CASE NOTES

The purpose of this constitutional provision was not to prevent the community from exercising legislatively authorized powers to operate public enterprises, but to prevent the community from surrendering its power to another person or set of persons by grant of exclusive or separate emoluments or privileges unless they were granted in consideration of public services; it is not retention of powers, but alienation of powers, that is prohibited. Madison Cablevision, Inc. v. City of Morganton, 325 N.C. 634, 386 S.E.2d 200 (1989).

Statutes Which Confer Benefits on a Particular Group of Persons. — A statute which confers an exemption that benefits a particular group of persons is not an exclusive emolument or privilege within the meaning of this section, if: (1) the exemption is intended to promote the general welfare rather than the benefit of the individual, and (2) there is a reasonable basis for the legislature to conclude the granting of the exemption serves the public interest. Town of Emerald Isle ex rel. Smith v. State, 320 N.C. 640, 360 S.E.2d 756 (1987).

Section 62-2 does not confer an exclusive emolument or privilege by creating a private benefit only for those residents of unserved areas in violation of this section. State ex rel. Utils. Comm'n v. Carolina Util. Customers Ass'n, 336 N.C. 657, 446 S.E.2d 332 (1994).

Statutes of Limitations. — Section 1-50(6) (now § 1-50(a)(6)) does not grant "exclusive or separate emoluments or privileges" to the persons it protects in violation of this section. Tetterton v. Long Mfg. Co., 314 N.C. 44, 332 S.E.2d 67 (1985).

Validity of § 24-5. — The Legislature could reasonably have concluded that the classification scheme established by § 24-5 would best serve to further important and legitimate public purposes, including compensation of a plaintiff for the loss-of-use value of a damage award, the prevention of unjust enrichment to liability insurers who are required by law to maintain claim reserves on which interest is earned, and the promotion of settlement by these insurers, who unlike self-insurers, have as their primary business the insuring, investigation, defense and settlement of claims. The Legislature could have reasonably concluded that the distinction between defendants with liability insurance and those without was a valid one, and that the public welfare would be best served by such a classification. Therefore, § 24-5 does not create a special emolument or privilege within the meaning of this section. Lowe v. Tarble, 312 N.C. 467, 323 S.E.2d 19 (1984), aff'd on rehearing, 313 N.C. 460, 329 S.E.2d 648 (1985).

Section 24-5 does not violate N.C. Const., Art. I, §§ 19 and 32 or the equal protection and due process clauses of U.S. Const., Amend. XIV. Harris v. Scotland Neck Rescue Squad, Inc., 75 N.C. App. 444, 331 S.E.2d 695, cert. denied, 314 N.C. 329, 333 S.E.2d 486 (1985).

Section 53-229, relating to the acquisition and control of certain nonbank banking institutions, does not violate the commerce clause of the U.S. Constitution, nor the equal protection, exclusion emoluments and antimonopoly provisions of N.C. Const., Art. I, §§ 19, 32 and 34. Citicorp v. Currie, 75 N.C. App. 312, 330 S.E.2d 635, cert. denied and appeal dismissed, 314 N.C. 537, 538, 335 S.E.2d 15, 16 (1985).

City's refusal to grant cable television franchises to private applicants did not violate the exclusive emoluments and monopoly clauses of this section and N.C. Const., Art. I, § 34, or the antimonopoly and unfair trade practices of Chapter 75. Madison Cablevision, Inc. v. City of Morganton, 325 N.C. 634, 386 S.E.2d 200 (1989).

Severance Pay. — Where county manager worked one month after giving notice of his resignation and received all compensation due him under the terms of his employment with the county, severance pay would be compensation beyond that due for services rendered and, thus, constitutionally impermissible. Leete v. County of Warren, 341 N.C. 116, 462 S.E.2d 476 (1995).

Severance pay to county manager who voluntarily resigned violated North Carolina Constitution, Art. 1, § 32, because county manager was to be compensated for duties that were not performed, since the record reflected that the compensation was not for prior services rendered, and he was paid all benefits due him. Leete v. County of Warren, 341 N.C. 116, 459 S.E.2d 232 (1995).

Restrictions on vehicular traffic contained in Session Laws 1983, Chapter 539 were intended to promote the general welfare of the public and were reasonably based to further that intent. Thus, those restrictions do not violate this section. Town of Emerald Isle ex rel. Smith v. State, 320 N.C. 640, 360 S.E.2d 756 (1987).

Applied in State v. Stanley, 79 N.C. App. 379, 339 S.E.2d 668 (1986); State ex rel. Martin v. Preston, 325 N.C. 438, 385 S.E.2d 473 (1989).

Cited in State ex rel. Banking Comm'n v. Citicorp Sav. Indus. Bank, 74 N.C. App. 474, 328 S.E.2d 895 (1985); Town of Emerald Isle v. State, 78 N.C. App. 736, 338 S.E.2d 581 (1986); Empire Distribs. of N.C., Inc. v. Schieffelin & Co., 677 F. Supp. 847 (W.D.N.C. 1988).

Quoted in Gwathmey v. State ex rel. Dep't of Env't, Health & Natural Resources, 342 N.C. 287, 464 S.E.2d 674 (1995).

Sec. 34. Perpetuities and monopolies.

Legal Periodicals. — For article, "A Proposal for a Simple and Socially Effective Rule Against Perpetuities," see 66 N.C.L. Rev. 545 (1988).

For article, "Does the Fee Tail Exist in North Carolina?," see 23 Wake Forest L. Rev. 767 (1988).

CASE NOTES

The distinctive characteristics of a monopoly are (1) control of so large a portion of the market of a certain commodity that (2) competition is stifled, (3) freedom of commerce is restricted and (4) the monopolist controls prices. American Motors Sales Corp. v. Peters, 311 N.C. 311, 317 S.E.2d 351 (1984).

City's refusal to grant cable television franchises to private applicants did not violate the exclusive emoluments and monopoly clauses of N.C. Const., Art. I, § 32 and this section, or the antimonopoly and unfair trade practices of Chapter 75. Madison Cablevision, Inc. v. City of Morganton, 325 N.C. 634, 386 S.E.2d 200 (1989).

Section 53-229, relating to the acquisition and control of certain nonbank banking institutions, does not violate the commerce clause of the U.S. Constitution, nor the equal protection, exclusion emoluments and antimonopoly provisions of the State Constitution. Citicorp v. Currie, 75 N.C. App. 312, 330 S.E.2d 635, cert. denied and appeal dismissed, 314 N.C. 537, 538, 335 S.E.2d 15, 16 (1985).

Cited in State ex rel. Banking Comm'n v. Citicorp Sav. Indus. Bank, 74

N.C. App. 474, 328 S.E.2d 895 (1985); Coastal Neuro-Psychiatric Assocs. v. Onslow Mem. Hosp., 795 F.2d 340 (4th Cir. 1986); Jetstream Aero Servs., Inc. v. New Hanover County, 672 F. Supp. 879 (E.D.N.C. 1987); Empire Distribs. of N.C., Inc. v. Schieffelin & Co., 677 F. Supp. 847 (W.D.N.C. 1988).

Sec. 35. Recurrence to fundamental principles.

Legal Periodicals. — For an essay, "On the Significance of Constitutional Spirit," see 70 N.C.L. Rev. 1803 (1992).

CASE NOTES

Quoted in Treants Enters., Inc. v. Onslow County, 83 N.C. App. 345, 350 S.E.2d 365 (1986); Corum v. University of N.C. ex rel. Bd. of Governors, 330 N.C. 761, 413 S.E.2d 276, reh'g denied, 331 N.C. 558, 418 S.E.2d 664, cert. denied, 506 U.S. 985, 113 S. Ct. 493, 121 L. Ed. 2d 431 (1992).

Cited in State v. Avery, 315 N.C. 1, 337 S.E.2d 786 (1985); Corum v. University of N.C., 97 N.C. App. 527, 389 S.E.2d 596 (1990); Boesche v. Raleigh-Durham Airport Auth., 111 N.C. App. 149, 432 S.E.2d 137 (1993).

Sec. 36. Other rights of the people.

CASE NOTES

Cited in Boesche v. Raleigh-Durham Airport Auth., 111 N.C. App. 149, 432 S.E.2d 137 (1993).

Sec. 37. (Effective upon certification of approval) Rights of victims of crime.

(1) *Basic rights.* Victims of crime, as prescribed by law, shall be entitled to the following basic rights:

(a) The right as prescribed by law to be informed of and to be present at court proceedings of the accused.

(b) The right to be heard at sentencing of the accused in a manner prescribed by law, and at other times as prescribed by law or deemed appropriate by the court.

(c) The right as prescribed by law to receive restitution.

(d) The right as prescribed by law to be given information about the crime, how the criminal justice system works, the rights of victims, and the availability of services for victims.

(e) The right as prescribed by law to receive information about the conviction or final disposition and sentence of the accused.

(f) The right as prescribed by law to receive notification of escape, release, proposed parole or pardon of the accused, or notice of a reprieve or commutation of the accused's sentence.

(g) The right as prescribed by law to present their views and concerns to the Governor or agency considering any action that could result in the release of the accused, prior to such action becoming effective.

(h) The right as prescribed by law to confer with the prosecution.

(2) *No money damages; other enforcement.* Nothing in this section shall be construed as creating a claim for money damages against the State, a county, a municipality, or any of the agencies, instrumentalities, or employees thereof. The General Assembly may provide for other remedies to ensure adequate enforcement of this section.

(3) *No ground for relief in criminal case.* The failure or inability of any person to provide a right or service provided under this section may not be used by a defendant in a criminal case, an inmate, or any other accused as a ground for relief in any trial, appeal, postconviction litigation, habeas corpus, civil action, or any similar criminal or civil proceeding. (1995, c. 438, s. 1.)

Editor's Note. — Session Laws 1995, c. 438, s. 2, provides that this proposed new section be submitted to the qualified voters of the State at the general election to be held in November 1996 under the laws then governing elections in the State, and that ballots, voting systems, or both may be used which shall be conducted, in accordance with Chapter 163 of the General Statutes.

Session Laws 1995, c. 438, s. 3, makes this section effective upon certification of approval by the State Board of elections to the Secretary of State.

ARTICLE II

LEGISLATIVE

Section 1. Legislative power.

CASE NOTES

The Power to Zone, etc. — Power to zone real property is vested in the General Assembly by this section. Chrismon v. Guilford County, 322 N.C. 611, 370 S.E.2d 579 (1988).

Discretion to Determine Whether Commissioners Should Be Elected or Appointed. — Discretion provided by § 156-81(a) and (i) to the clerks of superior court to determine whether drainage commissioners should be elected or appointed is an unconstitutional delegation of legislative powers. Northampton County Drainage Dist. Number One v. Bailey, 326 N.C. 742, 392 S.E.2d 352 (1990).

Cited in State v. Gravette, 327 N.C. 114, 393 S.E.2d 856 (1990).

OPINIONS OF ATTORNEY GENERAL

Delay of Rules by Review Commission. — An act vesting in the Administrative Rules Review Commission (ARRC), a commission appointed by the General Assembly, the power to delay indefinitely the effective date of duly adopted agency rules which it deems in excess of statutory authority would likely be held to violate this section by vesting the ARRC with judicial powers reserved to the court and with supreme legislative powers reserved to the General Assembly. See opinion of Attorney General to Henson P. Barnes, President Pro Tempore, Senate, — N.C.A.G. — (February 25, 1991).

Sec. 2. Number of Senators.

Defeated Amendment Proposals. —

An amendment proposed by Session Laws 1985, c. 768, s. 11, and defeated at the primary election held on May 6, 1986, would have added "Except that there shall be no election in 1988, and elections shall be conducted in 1989 and biennially thereafter" at the end of the section.

Sec. 3. Senate districts; apportionment of Senators.

Legal Periodicals. — For article, "Political Gerrymandering After Davis v. Bandemer," see 9 Campbell L. Rev. 207 (1987).

For article, "Racial Gerrymandering and the Voting Rights Act in North Carolina," see 9 Campbell L. Rev. 255 (1987).

CASE NOTES

Cited in State ex rel. Martin v. Preston, 325 N.C. 438, 385 S.E.2d 473 (1989).

Sec. 4. Number of Representatives.

Defeated Amendment Proposals. —

An amendment proposed by Session Laws 1985, c. 768, s. 11, and defeated at the primary election held on May 6, 1986, would have added "Except that there shall be no election in 1988, and elections shall be conducted in 1989 and biennially thereafter" at the end of the section.

Sec. 5. Representative districts; apportionment of Representatives.

Legal Periodicals. — For article, "Political Gerrymandering After Davis v. Bandemer," see 9 Campbell L. Rev. 207 (1987).

For article, "Racial Gerrymandering and the Voting Rights Act in North Carolina," see 9 Campbell L. Rev. 255 (1987).

CASE NOTES

Cited in State ex rel. Martin v. Preston, 325 N.C. 438, 385 S.E.2d 473 (1989).

Sec. 8. Elections.

Defeated Amendment Proposals. —

An amendment proposed by Session Laws 1985, c. 768, s. 1, and defeated at the primary election held on May 6, 1986, would have amended this section by deleting "1972 and every two years thereafter" and substituting "1986, and in 1989 and every two years thereafter."

Sec. 11. Sessions.

Defeated Amendment Proposals. — An amendment proposed by Session Laws 1985, c. 768, s. 12, and defeated at the primary election held on May 6, 1986, would have amended this section by substituting "1987, and in 1990 and every two years thereafter" for "1973 and every two years thereafter" in subsection (1).

CASE NOTES

Quoted in Newsome v. North Carolina State Bd. of Elections, 105 N.C. App. 499, 415 S.E.2d 201 (1992).

Sec. 22. (Effective January 1, 1997, contingent upon approval) Action on bills.

(1) *Bills subject to veto by Governor; override of veto.* Except as provided by subsections (2) through (6) of this section, all bills shall be read three times in each house and shall be signed by the presiding officer of each house before being presented to the Governor. If the Governor approves, the Governor shall sign it and it shall become a law; but if not, the Governor shall return it with objections, together with a veto message stating the reasons for such objections, to that house in which it shall have originated, which shall enter the objections and veto message at large on its journal, and proceed to reconsider it. If after such reconsideration three-fifths of the members of that house present and voting shall agree to pass the bill, it shall be sent, together with the objections and veto message, to the other house, by which it shall likewise be reconsidered; and if approved by three-fifths of the members of that house present and voting, it shall become a law notwithstanding the objections of the Governor. In all such cases the votes of both houses shall be determined by yeas and nays, and the names of the members voting shall be entered on the journal of each house respectively.

(2) *Amendments to Constitution of North Carolina.* Every bill proposing a new or revised Constitution or an amendment or amendments to this Constitution or calling a convention of the people of this State, and containing no other matter, shall be submitted to the qualified voters of this State after it shall have been read three times in each house and signed by the presiding officers of both houses.

(3) *Amendments to Constitution of the United States.* Every bill approving an amendment to the Constitution of the United States, or applying for a convention to propose amendments to the Constitution of the United States, and containing no other matter, shall be read three times in each house before it becomes law, and shall be signed by the presiding officers of both houses.

(4) *Joint resolutions.* Every joint resolution shall be read three times in each house before it becomes effective and shall be signed by the presiding officers of both houses.

(5) *Other exceptions.* Every bill:

(a) In which the General Assembly makes an appointment or appointments to public office and which contains no other matter;

(b) Revising the senate districts and the apportionment of Senators among those districts and containing no other matter;

(c) Revising the representative districts and the apportionment of Representatives among those districts and containing no other matter; or

(d) Revising the districts for the election of members of the House of Representatives of the Congress of the United

States and the apportionment of Representatives among those districts and containing no other matter,

shall be read three times in each house before it becomes law and shall be signed by the presiding officers of both houses.

(6) *Local bills.* Every bill that applies in fewer than 15 counties shall be read three times in each house before it becomes law and shall be signed by the presiding officers of both houses. The exemption from veto by the Governor provided in this subsection does not apply if the bill, at the time it is signed by the presiding officers:

(a) Would extend the application of a law signed by the presiding officers during that two year term of the General Assembly so that the law would apply in more than half the counties in the State, or

(b) Would enact a law identical in effect to another law or laws signed by the presiding officers during that two year term of the General Assembly that the result of those laws taken together would be a law applying in more than half the counties in the State.

Notwithstanding any other language in this subsection, the exemption from veto provided by this subsection does not apply to any bill to enact a general law classified by population or other criteria, or to any bill that contains an appropriation from the State treasury.

(7) *Time for action by Governor; reconvening of session.* If any bill shall not be returned by the Governor within 10 days after it shall have been presented to him, the same shall be a law in like manner as if he had signed it, unless the General Assembly shall have adjourned:

(a) For more than 30 days jointly as provided under Section 20 of Article II of this Constitution; or

(b) Sine die

in which case it shall become a law unless, within 30 days after such adjournment, it is returned by the Governor with objections and veto message to that house in which it shall have originated. When the General Assembly has adjourned sine die or for more than 30 days jointly as provided under Section 20 of Article II of this Constitution, the Governor shall reconvene that session as provided by Section 5(11) of Article III of this Constitution for reconsideration of the bill, and if the Governor does not reconvene the session, the bill shall become law on the fortieth day after such adjournment. Notwithstanding the previous sentence, if the Governor prior to reconvening the session receives written requests dated no earlier than 30 days after such adjournment, signed by a majority of the members of each house that a reconvened session to reconsider vetoed legislation is unnecessary, the Governor shall not reconvene the session for that purpose and any legislation vetoed in accordance with this section after adjournment shall not become law.

(8) *Return of bills after adjournment.* For purposes of return of bills not approved by the Governor, each house shall designate an officer to receive returned bills during its adjournment. (1995, c. 5, s. 1.)

For this section as in effect until January 1, 1997, contingent upon approval, see the main volume.

Editor's Note. — Session Laws 1995, c. 5, s. 4, makes this section effective January 1, 1997 upon certification.

Session Laws 1995, c. 5, s. 3, provides that the proposed amendments set out in sections 1 and 2 of the act shall be submitted to the qualified voters at the general election in November 1996. Section 3 further provides for the form of ballot and the use of voting machines.

Session Laws 1995, c. 5, s. 4 provides that if a majority of votes cast on the question are in favor of the amendments set out in Sections 1 and 2 the State Board of Elections shall certify the amendments to the Secretary of State who shall enroll the amendments among the permanent records of that office.

Sec. 23. Revenue bills.

CASE NOTES

I. General Consideration.

I. GENERAL CONSIDERATION.

Article II, § 14 of the 1868 Constitution is substantially the same as this section. North Carolina E. Mun. Power v. Wake County, 100 N.C. App. 693, 398 S.E.2d 486 (1990), cert. denied, 329 N.C. 270, 407 S.E.2d 838 (1991).

Applicability of This Section to Statutes Imposing a Tax. — It is well established law in this State that when determining the constitutional validity of a statute, if the meaning is clear from reading the words of the Constitution, courts should not search for a meaning elsewhere. The language of this section is clear in that it applies to statutes enacted to impose a tax. North Carolina E. Mun. Power v. Wake County, 100 N.C. App. 693, 398 S.E.2d 486 (1990), cert. denied, 329 N.C. 270, 407 S.E.2d 838 (1991).

Inapplicability to Session Laws 1987 (Reg. Sess., 1988), Chapter 1052. — There is no doubt that the effect of Chapter 1052 of Session Laws 1987 (Reg. Sess., 1988) imposed a greater tax burden on plaintiff for 1988. However, this section focuses on the purpose of the statute (to impose a tax) and not the result of the statute (an increased tax burden). Chapter 1052 of Session Laws 1987 (Reg. Sess., 1988) neither imposes a tax nor authorizes its imposition, and therefore, this section does not apply. North Carolina E. Mun. Power v. Wake County, 100 N.C. App. 693, 398 S.E.2d 486 (1990), cert. denied, 329 N.C. 270, 407 S.E.2d 838 (1991).

If an act is not a revenue or tax act from the outset, it does not matter if the act is retroactive or prospective in its application. North Carolina E. Mun. Power v. Wake County, 100 N.C. App. 693, 398 S.E.2d 486 (1990), cert. denied, 329 N.C. 270, 407 S.E.2d 838 (1991).

A bailment surcharge imposed on each case of distilled spirits shipped from ABC warehouse to ABC stores is not a tax; the cost of liquor enforcement is a burden incident to the privilege of buying spirituous liquors in the state and such a surcharge is not unconstitutional as a tax imposed in violation of this section or of N.C. Const., Art. V, § 2. North Carolina Ass'n of ABC Bds. v. Hunt, 76 N.C. App. 290, 332 S.E.2d 693, cert. denied, 314 N.C. 667, 336 S.E.2d 400 (1985).

Sec. 24. Limitations on local, private, and special legislation.

Legal Periodicals. —

As to comment discussing beach access legislation as unconstitutional local legislation, see 64 N.C.L. Rev. 159 (1985).

For article, "The Battle to Preserve North Carolina's Estuarine Marshes: The 1985 Legislation, Private Claims to Estuarine Marshes, Denial of Permits to Fill, and the Public Trust," see 64 N.C.L. Rev. 565 (1986).

For note, "Town of Emerald Isle v. State of North Carolina: A New Test for Distinguishing Between General Laws and Local Legislation," see 66 N.C.L. Rev. 1096 (1988).

For comment, "Legal Analysis of the Constitutionality of the Water Supply Watershed Protection Act of 1989 and the Hyde Bill," see 29 Wake Forest L. Rev. 1279 (1994).

CASE NOTES

I. General Consideration.
II. Health, Sanitation and Nuisances.
IV. Highways, Streets and Alleys.
VII. Regulation of Trade.

I. GENERAL CONSIDERATION.

Purpose of Section. —

In accord with fourth paragraph in main volume. See Town of Emerald Isle ex rel. Smith v. State, 320 N.C. 640, 360 S.E.2d 756 (1987).

Prospective Effect of Statute's Unconstitutionality. — Where defendants reasonably relied on invalid statute and acted in good faith in carrying out the mandate of the General Assembly, the trial court did not err by directing the effect of the statute's unconstitutionality to have only a prospective application. City of New Bern v. New Bern-Craven County Bd. of Educ., 113 N.C. App. 98, 437 S.E.2d 655 (1993), aff'd, 338 N.C. 430, 450 S.E.2d 735 (1994).

Annexation Provisions. — Sections 160A-45 et seq. do not violate this section, which prohibits the General Assembly from enacting "any local, private, or special act or resolution" in regard to certain enumerated subjects. This constitutional provision does not apply to annexation proceedings by municipalities, since N.C. Const., Art. VII, § 1 authorizes the General Assembly "except as otherwise prohibited by this Constitution" to "give such powers and duties to counties, cities, and towns and other governmental subdivisions as it may deem advisable," and no other provision of the Constitution prohibits the General Assembly from enacting special legislation for the annexation of areas by municipalities. Campbell v. City of Greensboro, 70 N.C. App. 252, 319 S.E.2d 323, cert. denied and appeal dismissed, 312 N.C. 492, 322 S.E.2d 553 (1984).

Applied in Floyd v. Lumberton City Bd. of Educ., 71 N.C. App. 670, 324 S.E.2d 18 (1984).

Cited in Clark v. Craven Regional Medical Auth., 326 N.C. 15, 387 S.E.2d 168 (1990).

II. HEALTH, SANITATION AND NUISANCES.

Local Health and Sanitation Acts. — Acts held to be "local," and related to "health" and "sanitation," were prohibited subjects of legislation and therefore unconstitutional. City of New Bern v. New Bern-Craven County Bd. of Educ., 113 N.C. App. 98, 437 S.E.2d 655 (1993), aff'd, 338 N.C. 430, 450 S.E.2d 735 (1994).

Local Annexation Statute. — As § 160A-49.3 provides for solid waste collection to newly annexed areas of cities under the general law providing for annexation, and as the General Assembly made § 160A-49.3 applicable to the annexation of certain land to the City of Greensboro by Session Laws 1985 (Reg. Sess., 1986), c. 818, s. 3, that act was not a local act in violation of this section, since it did not subject the annexed area to a different treatment than it would have faced if the city had annexed the area under the general annexation law, but assured that it would receive the same treatment. Piedmont Ford Truck Sales, Inc. v. City of Greensboro, 324 N.C. 499, 380 S.E.2d 107 (1989).

Inspections pursuant to the State Building Code affect health and sanitation; thus acts that altered the legislative directive of § 160A-411, that the city shall determine who will perform the inspections under the Code, were local legislation that shifted responsibility for enforcement of laws affecting the health of the public, and were barred under this section of the Constitution. City of New Bern v. New Bern-Craven County Bd. of Educ., 338 N.C. 430, 450 S.E.2d 735 (1994).

IV. HIGHWAYS, STREETS AND ALLEYS.

Limitations of Vehicular Access on Public Streets in Town. — The case annotated under this catchline in the main volume has been reversed. See Town of Emerald Isle ex rel. Smith v. State, 320 N.C. 640, 360 S.E.2d 756 (1987).

State Law to Establish Access Facilities to Beaches Is a General Law. — Session Laws 1983, Chapter 539, the purpose of which is to establish pedestrian beach access facilities for general public use in the vicinity of Bogue Inlet, is a general law and not a local act. Town of Emerald Isle ex rel. Smith v. State, 320 N.C. 640, 360 S.E.2d 756 (1987).

VII. REGULATION OF TRADE.

Section 160A-273, which permits municipalities to convey air rights over streets or other property, is not a special act and does not violate subdivision (1)(j). Cheape v. Town of Chapel Hill, 320 N.C. 549, 359 S.E.2d 792 (1987).

A local act which merely declared that the town had the capacity to engage in economic development projects, with or without private parties, did not "regulate" trade and therefore did not violate subdivision (1)(j). Cheape v. Town of Chapel Hill, 320 N.C. 549, 359 S.E.2d 792 (1987).

ARTICLE III

EXECUTIVE

Section 1. Executive power.

Legal Periodicals. — For note on the separation of powers and the power to appoint, see 66 N.C.L. Rev. 1109 (1988).

CASE NOTES

"Executive Power" Defined. — "Executive power" means the power of executing laws. The appointment of someone to execute the laws does not require the appointing party to execute the laws. State ex rel. Martin v. Melott, 320 N.C. 518, 359 S.E.2d 783 (1987).

The duty of the attorney general to appear for the state in any court proceeding in which the state may be a party, as provided in § 114-2(1), does not violate this section. Martin v. Thornburg, 320 N.C. 533, 359 S.E.2d 472 (1987).

Sec. 2. Governor and Lieutenant Governor: election, term, and qualifications.

Editor's Note. — Session Laws 1985 (Reg. Sess., 1986), c. 1010, repealed Session Laws 1985, c. 61, which had proposed to amend this section by rewriting the last sentence of subsection (2).

Defeated Amendment Proposals. —

An amendment proposed by Session Laws 1985, c. 768, ss. 2, 3 and 9.1(1), and defeated at the primary election held on May 6, 1986, would have amended this section by substituting "1988, and in 1993 and every four years thereafter" for "1972 and every four years thereafter" in the first sentence of subsection (1), by adding "except in 1988 at the same time and places as members of the United States House of Representatives are elected" at the end of the first sentence of subsection (1), and by adding "except that the term of office of those elected in 1988 shall be for five years" at the end of subsection (1).

Sec. 5. (Effective until January 1, 1997, contingent upon approval) Duties of Governor.

CASE NOTES

Power of Appointment. — The Governor has the power to appoint an officer of the State with the advice and consent of a majority of the Senators, unless there is some other provision for the appointment. State ex rel. Martin v. Melott, 320 N.C. 518, 359 S.E.2d 783 (1987).

Appointment by Chief Justice of Supreme Court. — It is not a violation of the separation of powers provision of the Constitution for the General Assembly to provide that the Chief Justice of the Supreme Court shall appoint the Director of the Office of Administrative Hearings. State ex rel. Martin v. Melott, 320 N.C. App. 518, 359 S.E.2d 783 (1987).

Sec. 5. (Effective January 1, 1997, contingent upon approval) Duties of Governor.

(1) *Residence.* The Governor shall reside at the seat of government of this State.

(2) *Information to General Assembly.* The Governor shall from time to time give the General Assembly information of the affairs of the State and recommend to their consideration such measures as he shall deem expedient.

(3) *Budget.* The Governor shall prepare and recommend to the General Assembly a comprehensive budget of the anticipated revenue and proposed expenditures of the State for the ensuing fiscal period. The budget as enacted by the General Assembly shall be administered by the Governor.

The total expenditures of the State for the fiscal period covered by the budget shall not exceed the total of receipts during that fiscal period and the surplus remaining in the State Treasury at the beginning of the period. To insure that the State does not incur a deficit for any fiscal period, the Governor shall continually survey the collection of the revenue and shall effect the necessary economies in State expenditures, after first making adequate provision for the prompt payment of the principal of and interest on bonds and notes of the State according to their terms, whenever he determines that receipts during the fiscal period, when added to any surplus remaining in the State Treasury at the beginning of the period, will not be sufficient to meet budgeted expenditures. This section shall not be construed to impair the power of the State to issue its bonds and notes within the limitations imposed in Article V of this Constitution, nor to impair the obligation of bonds and notes of the State now outstanding or issued hereafter.

(4) *Execution of laws.* The Governor shall take care that the laws be faithfully executed.

(5) *Commander in Chief.* The Governor shall be Commander in Chief of the military forces of the State except when they shall be called into the service of the United States.

(6) *Clemency.* The Governor may grant reprieves, commutations, and pardons, after conviction, for all offenses (except in cases of impeachment), upon such conditions as he may think proper, subject to regulations prescribed by law relative to the manner of applying for pardons. The terms reprieves, commutations, and pardons shall not include paroles.

(7) *Extra sessions.* The Governor may, on extraordinary occasions, by and with the advice of the Council of State, convene the General Assembly in extra session by his proclamation, stating therein the purpose or purposes for which they are thus convened.

(8) *Appointments.* The Governor shall nominate and by and with the advice and consent of a majority of the Senators appoint all officers whose appointments are not otherwise provided for.

(9) *Information.* The Governor may at any time require information in writing from the head of any administrative department or agency upon any subject relating to the duties of his office.

(10) *Administrative reorganization.* The General Assembly shall prescribe the functions, powers, and duties of the administrative

departments and agencies of the State and may alter them from time to time, but the Governor may make such changes in the allocation of offices and agencies and in the allocation of those functions, powers, and duties as he considers necessary for efficient administration. If those changes affect existing law, they shall be set forth in executive orders, which shall be submitted to the General Assembly not later than the sixtieth calendar day of its session, and shall become effective and shall have the force of law upon adjournment sine die of the session, unless specifically disapproved by resolution of either house of the General Assembly or specifically modified by joint resolution of both houses of the General Assembly.

(11) *Reconvened sessions.* The Governor shall, when required by Section 22 of Article II of this Constitution, reconvene a session of the General Assembly. At such reconvened session, the General Assembly may only consider such bills as were returned by the Governor to that reconvened session for reconsideration. Such reconvened session shall begin on a date set by the Governor, but no later than 40 days after the General Assembly adjourned:

(a) For more than 30 days jointly as provided under Section 20 of Article II of this Constitution; or

(b) *Sine die.* If the date of reconvening the session occurs after the expiration of the terms of office of the members of the General Assembly, then the members serving for the reconvened session shall be the members for the succeeding term. (1995, c. 5, s. 2.)

For this section as in effective until January 1, 1997, contingent upon approval, see the main volume.

Editor's Note. — Session Laws 1995, c. 5, s. 4, makes this section effective January 1, 1997 upon certification.

Session Laws 1995, c. 5, s. 3, provides that the proposed amendments set out in sections 1 and 2 of the act shall be submitted to the qualified voters at the general election in November 1996. Section 3 further provides for the form of ballot and the use of voting machines.

Session Laws 1995, c. 5, s. 4 provides that if a majority of votes cast on the question are in favor of the amendments set out in Sections 1 and 2 the State Board of Elections shall certify the amendments to the Secretary of State who shall enroll the amendments among the permanent records of that office.

CASE NOTES

Power of Appointment. — The Governor has the power to appoint an officer of the State with the advice and consent of a majority of the Senators, unless there is some other provision for the appointment. State ex rel. Martin v. Melott, 320 N.C. 518, 359 S.E.2d 783 (1987).

Appointment by Chief Justice of Supreme Court. — It is not a violation of the separation of powers provision of the Constitution for the General Assembly to provide that the Chief Justice of the Supreme Court shall appoint the Director of the Office of Administrative Hearings. State ex rel. Martin v. Melott, 320 N.C. App. 518, 359 S.E.2d 783 (1987).

Sec. 7. Other elective officers.

(1) *Officers.* A Secretary of State, an Auditor, a Treasurer, a Superintendent of Public Instruction, an Attorney General, a Commissioner of Agriculture, a Commissioner of Labor, and a Commissioner of Insurance shall be elected by the qualified voters of the State in 1972 and every four years thereafter, at the same time and places as members of the General Assembly are elected. Their term

of office shall be four years and shall commence on the first day of January next after their election and continue until their successors are elected and qualified.

(2) *Duties.* Their respective duties shall be prescribed by law.

(3) *Vacancies.* If the office of any of these officers is vacated by death, resignation, or otherwise, it shall be the duty of the Governor to appoint another to serve until his successor is elected and qualified. Every such vacancy shall be filled by election at the first election for members of the General Assembly that occurs more than 60 days after the vacancy has taken place, and the person chosen shall hold the office for the remainder of the unexpired term fixed in this Section. When a vacancy occurs in the office of any of the officers named in this Section and the term expires on the first day of January succeeding the next election for members of the General Assembly, the Governor shall appoint to fill the vacancy for the unexpired term of the office.

(4) *Interim officers.* Upon the occurrence of a vacancy in the office of any one of these officers for any of the causes stated in the preceding paragraph, the Governor may appoint an interim officer to perform the duties of that office until a person is appointed or elected pursuant to this Section to fill the vacancy and is qualified.

(5) *Acting officers.* During the physical or mental incapacity of any one of these officers to perform the duties of his office, as determined pursuant to this Section, the duties of his office shall be performed by an acting officer who shall be appointed by the Governor.

(6) *Determination of incapacity.* The General Assembly shall by law prescribe with respect to those officers, other than the Governor, whose offices are created by this Article, procedures for determining the physical or mental incapacity of any officer to perform the duties of his office, and for determining whether an officer who has been temporarily incapacitated has sufficiently recovered his physical or mental capacity to perform the duties of his office. Removal of those officers from office for any other cause shall be by impeachment.

(7) *Special Qualifications for Attorney General.* Only persons duly authorized to practice law in the courts of this State shall be eligible for appointment or election as Attorney General. (1983, c. 298, s. 1; 1985 (Reg. Sess., 1986), c. 920, s. 1.)

Effect of Amendments. — The amendment adopted by vote of the people at the general election held Nov. 6, 1984, effective January 1, 1985, added subsection (7).

The amendment adopted by vote of the people at the general election held Nov. 4, 1986, effective January 1, 1987, substituted "60 days" for "30 days" in the second sentence of subsection (3).

Defeated Amendment Proposals. —

An amendment proposed by Session Laws 1985, c. 768, ss. 4, 5 and 9.1(1), and defeated at the primary election held on May 6, 1986, would have amended this section by substituting "1988, and in 1993 and every four years thereafter" for "1972 and every four years thereafter" in the first sentence of subsection (1), by adding "except in 1988 at the same time and places as members of the United States House of Representatives are elected" at the end of the first sentence of subsection (1), and by adding "except that the term of office of those elected in 1988 shall be for five years" at the end of subsection (1).

Legal Periodicals. —

For article, "Changes In the State's Law Firm: The Powers, Duties and Operations of the Office of the Attorney General," see 12 Campbell L. Rev. 343 (1990).

CASE NOTES

Duty of Attorney General. — The Attorney General of North Carolina is a constitutional officer, and he is required to take an oath which among other things binds him to "support, maintain and defend the Constitution of North Carolina not inconsistent with the Constitution of the United States ...." It is but a small step from the language of this oath to the proposition asserted by the Attorney General, that his duty includes the defense of statutes of this State against charges of unconstitutionality. Hendon v. North Carolina State Bd. of Elections, 633 F. Supp. 454 (W.D.N.C. 1986).

Sole Discretion of Attorney General. — In passing § 114-11.6, the General Assembly made it clear that even upon a proper request and authorization by a district attorney, the Special Prosecution Division is to participate in criminal prosecutions only if the Attorney General, in his sole discretion as an independent constitutional officer, approves. Thus trial court exceeded its authority when it ordered that "the Attorney General's Office shall immediately assume the prosecution of" a capital case. State v. Camacho, 329 N.C. 589, 406 S.E.2d 868 (1991).

Applied in Martin v. Thornburg, 320 N.C. 533, 359 S.E.2d 472 (1987).

Cited in North Carolina ex rel. Long v. Alexander & Alexander Servs., Inc., 711 F. Supp. 257 (E.D.N.C. 1989).

Sec. 8. Council of State.

OPINIONS OF ATTORNEY GENERAL

Delegation of Power to Attend Meetings. — Those members of the Council of State who have statutory authority to delegate duties may, in conformity with such statutes, attend and vote at meetings of Boards of which they are ex officio members through delegates or designated subordinates. The remaining members of the Council of State may make similar delegations or designations where, in the member's judgment, other duties necessitate his absence and the statute creating his ex officio membership does not express or clearly imply an intent of the General Assembly that the powers of such membership be exercised personally. See opinion of Attorney General to the honorable James E. Long, Commissioner of Insurance, 55 N.C.A.G. 116 (1986).

ARTICLE IV

JUDICIAL

Section 1. Judicial power.

CASE NOTES

Judicial Power Vested in General Court of Justice. —

The judicial power of this state is "vested in a Court for the Trial of Impeachments and a General Court of Justice," and the latter constitutes "a unified judicial system for purposes of jurisdiction, operation, and administration," and includes a Superior Court Division. In re Alamance County Ct. Facilities, 329 N.C. 84, 405 S.E.2d 125 (1991).

The General Assembly shall have no power to deprive the judicial department of any power or jurisdiction that rightfully pertains to it as a coordinate department of the government. In re Alamance County Ct. Facilities, 329 N.C. 84, 405 S.E.2d 125 (1991).

Reconciliation with Need for Administrative Expertise. — A major purpose of N.C. Const., Art. IV, § 3, is to reconcile the retention of judicial power in the judicial branch required by this section, with the recognized need to utilize administrative expertise in implementing complicated regulatory schemes such as the Sedimentation Pollution Control Act. In re Appeal from Civil Penalty Assessed for Violations of Sedimentation Pollution Control Act, 92 N.C.

App. 1, 373 S.E.2d 572 (1988), rev'd on other grounds, 324 N.C. 373, 379 S.E.2d 30 (1989).

Limitation on Power of Legislature to Alter Judicial Result. — The doctrine of separation of powers precludes the legislature from enacting a statute which alters a result obtained by a final judicial decision before the date of the statute's enactment. Hogan v. Cone Mills Corp., 315 N.C. 127, 337 S.E.2d 477 (1985).

The inherent power of the Supreme Court has not been limited by the Constitution; on the contrary, the Constitution protects such power. Beard v. North Carolina State Bar, 320 N.C. 126, 357 S.E.2d 694 (1987).

The existence of inherent judicial power is not dependent upon legislative action; the General Assembly has recognized the existence of the inherent power of the court and cannot abridge that power. Beard v. North Carolina State Bar, 320 N.C. 126, 357 S.E.2d 694 (1987).

When the jurisdiction of a particular court, etc. —

In accord with second paragraph in the main volume. See Hogan v. Cone Mills Corp., 315 N.C. 127, 337 S.E.2d 477 (1985).

The General Assembly has no authority to deprive the judicial department of any power or jurisdiction that rightfully pertains to it as a coordinate department of the government. Beard v. North Carolina State Bar, 320 N.C. 126, 357 S.E.2d 694 (1987).

In Personam Orders. — By virtue of their being "a co-ordinate department of the government," courts of this state are empowered "to issue in personam orders requiring public officials to act in compliance with their ... public duties." In re Alamance County Ct. Facilities, 329 N.C. 84, 405 S.E.2d 125 (1991).

The order of the Supreme Court establishing the Client Security Fund and requiring annual payments by attorneys to the fund was essential corollary to the court's function, was required for the proper administration of justice, and did not violate the Constitution. Beard v. North Carolina State Bar, 320 N.C. 126, 357 S.E.2d 694 (1987).

Assessment of Penalty Held Unconstitutional. — Where the DMV assessed a penalty for operating a vehicle on the highways with a gross weight in excess of that allowed under the license obtained pursuant to § 20-96, but not in excess of the maximum axle weight limits, and such penalty was not authorized by § 20-118, such penalty violated this section and N.C. Const., Art. IV, § 3, since there was no reasonable necessity for conferring absolute judicial discretion in the DMV. Young's Sheet Metal & Roofing, Inc. v. Wilkins, 77 N.C. App. 180, 334 S.E.2d 419 (1985), cert. denied and appeal dismissed, 316 N.C. 202, 341 S.E.2d 574 (1986), decided prior to the 1985 amendment to § 20-96.

Cited in In re Appeal from Civil Penalty Assessed for Violations of Sedimentation Pollution Control Act, 324 N.C. 373, 379 S.E.2d 30 (1989).

OPINIONS OF ATTORNEY GENERAL

Delay of Rules by Review Commission. — An act vesting in the Administrative Rules Review Commission (ARRC), a commission appointed by the General Assembly, the power to delay indefinitely the effective date of duly adopted agency rules which it deems in excess of statutory authority would likely be held to violate this section by vesting the ARRC with judicial powers reserved to the court and with supreme legislative powers reserved to the General Assembly. See opinion of Attorney General to Henson P. Barnes, President Pro Tempore, Senate, 60 N.C.A.G. 70 (1991).

Sec. 2. General Court of Justice.

Legal Periodicals. — For article, "Constitutional Rights of Students, Their Families, and Teachers in the Public Schools," see 10 Campbell L. Rev. 353 (1988).

CASE NOTES

Cited in State v. Pennington, 327 N.C. 89, 393 S.E.2d 847 (1990); Ocean Hill Joint Venture v. North Carolina Dep't of Environment, Health & Natural Resources, 333 N.C. 318, 426 S.E.2d 274 (1993).

Sec. 3. Judicial powers of administrative agencies.

CASE NOTES

Purpose. — A major purpose of this section is to reconcile the retention of judicial power in the judicial branch required by N.C. Const., Art. IV, § 1, with the recognized need to utilize administrative expertise in implementing complicated regulatory schemes such as the Sedimentation Pollution Control Act. In re Appeal from Civil Penalty Assessed for Violations of Sedimentation Pollution Control Act, 92 N.C. App. 1, 373 S.E.2d 572 (1988), rev'd on other grounds, 324 N.C. 373, 379 S.E.2d 30 (1989).

The application of this section requires three questions be answered: (1) For what purposes was the agency created?, (2) which peculiarly "judicial" power has the General Assembly attempted to vest in the agency?, and (3) is the Legislature's grant of such judicial power reasonably necessary as an incident to the accomplishment of the purposes for which the agency was created? In re Appeal from Civil Penalty Assessed for Violations of Sedimentation Pollution Control Act, 92 N.C. App. 1, 373 S.E.2d 572 (1988), rev'd on other grounds, 324 N.C. 373, 379 S.E.2d 30 (1989).

Considerations Irrelevant to Determination of Whether Judicial Power Properly Conferred. — Considerations such as the maximum size of the civil penalty and the availability of alternative enforcement sanctions are irrelevant to the question of whether a civil penalty is a peculiarly "judicial" power reasonably necessary to the accomplishment of an agency's purposes; since the judiciary does not possess the power to enact specific civil penalties or other alternative enforcement sanctions, these legislative choices are not at issue in determining whether the Legislature has usurped a judicial power which may not be conferred under this section. In re Appeal from Civil Penalty Assessed for Violations of Sedimentation Pollution Control Act, 92 N.C. App. 1, 373 S.E.2d 572 (1988), rev'd on other grounds, 324 N.C. 373, 379 S.E.2d 30 (1989).

Limitation on Power of Legislature to Alter Judicial Result. — The doctrine of separation of powers precludes the legislature from enacting a statute which alters a result obtained by final judicial decision before the date of the statute's enactment. Hogan v. Cone Mills Corp., 315 N.C. 127, 337 S.E.2d 477 (1985).

Presumption of Propriety in Official Acts. — There is a rebuttable presumption that an administrative agency has properly performed its official duties; while arbitrary and capricious agency action is itself prohibited by federal and state due process, any assertion of arbitrary agency action does not necessarily require the agency's action be reviewed for compliance with every other requirement under the State and federal Constitutions. In re Appeal from Civil Penalty Assessed for Violations of Sedimentation Pollution Control Act, 92 N.C. App. 1, 373 S.E.2d 572 (1988), rev'd on other grounds, 324 N.C. 373, 379 S.E.2d 30 (1989).

This section does not prohibit the legislature from conferring the power on administrative agencies to assess civil penalties. In re Appeal from Civil Penalty Assessed for Violations of Sedimentation Pollution Control Act, 324 N.C. 373, 379 S.E.2d 30 (1989).

Civil Penalty Power Was Necessary to Accomplish Agency's Purpose. — This section contemplates that discretionary judicial authority may be granted to an agency when reasonably necessary to accomplish the agency's purposes; civil penalty power was reasonably necessary to the purposes for which North Carolina Department of Natural Resources and Community Development (NRCD) (now the Department of Environment, Health, and Natural Resources) was established. In re Appeal from Civil Penalty Assessed for Violations of Sedimentation Pollution Control Act, 324 N.C. 373, 379 S.E.2d 30 (1989).

This section does not prohibit the

legislature from conferring on administrative agencies the power to exercise discretion in determining civil penalties within an authorized range, provided that adequate guiding standards accompany that discretion. In re Appeal from Civil Penalty Assessed for Violations of Sedimentation Pollution Control Act, 324 N.C. 373, 379 S.E.2d 30 (1989).

Assessment of Civil Penalties Must Be Reasonably Necessary. — Administrative agencies are not constitutionally barred from assessing civil penalties. All administrative civil penalties are not per se in violation of the State Constitution, rather, the granting of the judicial power to assess a civil penalty must be "reasonably necessary" to the purposes for which the agency was created and with appropriate guidelines for the exercise of the discretion. North Carolina Private Protective Servs. Bd. v. Gray, Inc., 87 N.C. App. 143, 360 S.E.2d 135 (1987).

Assessment of Penalty Held Constitutional. — The authority of the Private Protective Services Board under subsection (c) of § 74C-17 to assess a civil penalty of up to two thousand dollars ($2,000) in lieu of revocation or suspension of a license is not an unconstitutional attempt to confer a judicial power on a state agency; the provision authorizing civil penalties is reasonably necessary to the Board in fulfilling its duties to require that those who hold themselves out as providing private protective services to citizens must meet high standards of training and professionalism. North Carolina Private Protective Servs. Bd. v. Gray, Inc., 87 N.C. App. 143, 360 S.E.2d 135 (1987).

This section did not prohibit the legislature from conferring on the North Carolina Department of Natural Resources and Community Development (NRCD) (now the Department of Environment, Health, and Natural Resources) the power to exercise discretion in determining civil penalties within an authorized range; plenary guiding standards existed to check the exercise of NRCD discretion in its assessment of civil penalties in varying amounts, commensurate with the seriousness of the violations of the Sedimentation Pollution Control Act. In re Appeal from Civil Penalty Assessed for Violations of Sedimentation Pollution Control Act, 324 N.C. 373, 379 S.E.2d 30 (1989).

Assessment of Penalty Held Unconstitutional. — Where the DMV assessed a penalty for operating a vehicle on the highways with a gross weight in excess of that allowed under the license obtained pursuant to § 20-96, but not in excess of the maximum axle weight limits, and such penalty was not authorized by § 20-118, such penalty violated N.C. Const., Art. IV, § 1 and this section since there was no reasonable necessity for conferring absolute judicial discretion in the DMV. Young's Sheet Metal & Roofing, Inc. v. Wilkins, 77 N.C. App. 180, 334 S.E.2d 419 (1985), cert. denied and appeal dismissed, 316 N.C. 202, 341 S.E.2d 574 (1986), decided prior to the 1985 amendment to § 20-96.

Stated in Ocean Hill Joint Venture v. North Carolina Dep't of Environment, Health & Natural Resources, 333 N.C. 318, 426 S.E.2d 274 (1993).

OPINIONS OF ATTORNEY GENERAL

Delay of Rules by Review Commission. — An act vesting in the Administrative Rules Review Commission (ARRC), a commission appointed by the General Assembly, the power to delay indefinitely the effective date of duly adopted agency rules which it deems in excess of statutory authority would likely be held to violate this section by vesting the ARRC with judicial powers reserved to the court and with supreme legislative powers reserved to the General Assembly. See opinion of Attorney General to Henson P. Barnes, President Pro Tempore, Senate, 60 N.C.A.G. 70 (February 25, 1991).

Sec. 7. Court of Appeals.

CASE NOTES

Cited in In re Doe, 329 N.C. 743, 407 S.E.2d 798 (1991).

Sec. 8. Retirement of Justices and Judges.

Legal Periodicals. — For note entitled, "Gregory v. Ashcroft: The Plain Statement Rule and Judicial Supervision of Federal-State Relations," see 70 N.C.L. Rev. 1563 (1992).

CASE NOTES

Intent of Amendment. — The language employed in the amendment to this section is a clear indication of the people's intent to empower the legislature to interrupt judicial terms of office with an age limit on active service. Martin v. State, 330 N.C. 412, 410 S.E.2d 474 (1991).

Interpretation of "For Service." — The words, "for service," as used in the amendment to this section refers exclusively to the time during which an individual justice or judge is eligible to serve notwithstanding the length of his or her term of office. The words, "for service," as used in this section therefore, evince an intent to empower the legislature to render particular justices or judges ineligible for active service because of age notwithstanding that time may remain in their terms of office. Martin v. State, 330 N.C. 412, 410 S.E.2d 474 (1991).

Stated in In re City of Durham Annexation Ordinance Numbered 5991 for Area A, 69 N.C. App. 77, 316 S.E.2d 649 (1984).

Sec. 9. Superior Courts.

Defeated Amendment Proposals. — An amendment proposed by Session Laws 1981, c. 504, and defeated at the general election held in 1982, would have substituted "at the places and on the day prescribed by law" for "at the same time and places as members of the General Assembly are elected" at the end of the first sentence of subsection (3).

An amendment proposed by Session Laws 1985, c. 768, s. 9, and defeated at the primary election held on May 6, 1986, would have amended this section by adding "except that those elected in 1986 and 1988 shall serve for a term of five years" at the end of the first sentence of subsection (3).

An amendment proposed by Session Laws 1985, c. 768, s. 9.1(1), and defeated at the primary election held on May 6, 1986, would have amended this section by adding "except in 1988 at the same time and place as members of the United States House of Representatives are elected" at the end of the first sentence of subsection (3).

CASE NOTES

The issuance of a commission by the chief justice assigning a superior court judge to preside over a session of superior court does not endow the judge with jurisdiction, power, or authority to act as a superior court judge; the commission so issued merely manifests that such judge has been duly assigned pursuant to the Constitution to preside over such session of court. The judge's jurisdiction, power, and authority as a superior court judge flow from the Constitution of North Carolina and his appointment and commission by the Governor as a superior court judge. State v. Eley, 326 N.C. 759, 392 S.E.2d 394 (1990).

Applied in State ex rel. Martin v. Preston, 325 N.C. 438, 385 S.E.2d 473 (1989).

Quoted in Republican Party v. Hunt, 841 F. Supp. 722 (E.D.N.C.), aff'd sub nom. Republican Party v. North Carolina State Bd. of Elections, 27 F.3d 563 (4th Cir. 1994).

Cited in Bradshaw v. Administrative Office of Courts, 320 N.C. 132, 357 S.E.2d 370 (1987); Republican Party v. Martin, 980 F.2d 943 (4th Cir. 1992), rehearing denied, 991 F.2d 1202 (4th Cir.), cert. denied, — U.S. —, 114 S. Ct. 93, 126 L. Ed. 2d 60 (1993); Capital Outdoor Adv., Inc. v. City of Raleigh, 109 N.C. App. 399, 427 S.E.2d 154 (1993).

Sec. 10. District Courts.

Defeated Amendment Proposals. — An amendment proposed by Session Laws 1985, c. 768, s. 8, and defeated at the primary election held on May 6, 1986, would have amended this section by adding "except that those elected in 1986 and 1988 shall serve for a term of five years" at the end of the second sentence.

Legal Periodicals. — For comment on changing North Carolina's method of judicial selection, see 25 Wake Forest L. Rev. 253 (1990).

CASE NOTES

Preference May Be Given to Political Party of Vacating Judge. — The General Assembly may require that, in the interim appointment of a district court judge, preference must be given to a member of the same political party as the vacating judge. Baker v. Martin, 330 N.C. 331, 410 S.E.2d 887 (1991).

Section 7A-142, which provides that candidates for a vacancy in the office of a district judge shall be members of the same political party as the vacating judge does not violate the Constitution of North Carolina. Baker v. Martin, 330 N.C. 331, 410 S.E.2d 887 (1991).

Applied in State ex rel. Martin v. Preston, 325 N.C. 438, 385 S.E.2d 473 (1989).

Cited in Bradshaw v. Administrative Office of Courts, 320 N.C. 132, 357 S.E.2d 370 (1987); In re Doe, 329 N.C. 743, 407 S.E.2d 798 (1991); Republican Party v. Martin, 980 F.2d 943 (4th Cir. 1992), rehearing denied, 991 F.2d 1202 (4th Cir.), cert. denied, — U.S. —, 114 S. Ct. 93, 126 L. Ed. 2d 60 (1993).

Sec. 11. Assignment of Judges.

CASE NOTES

The issuance of a nunc pro tunc commission was unquestionably lawful and in full accord with the Constitution of North Carolina. State v. Eley, 326 N.C. 759, 392 S.E.2d 394 (1990).

The issuance of a commission by the Chief Justice assigning a superior court judge to preside over a session of superior court does not endow the judge with jurisdiction, power, or authority to act as a superior court judge; the commission so issued merely manifests that such judge has been duly assigned pursuant to the Constitution to preside over such session of court. The judge's jurisdiction, power, and authority as a superior court judge flow from the Constitution of North Carolina and his appointment and commission by the Governor as a superior court judge. State v. Eley, 326 N.C. 759, 392 S.E.2d 394 (1990).

The commission to preside, issued by the Chief Justice, was sufficient and the assigned judge had proper jurisdiction when he signed both the equitable distribution judgment and the order dismissing defendant's appeal. Lockert v. Lockert, 116 N.C. App. 73, 446 S.E.2d 606, cert. granted in part and denied in part, writ of supersedeas allowed, 338 N.C. 311, 450 S.E.2d 487 (1994).

Quoted in Republican Party v. Hunt, 841 F. Supp. 722 (E.D.N.C.), aff'd sub nom. Republican Party v. North Carolina State Bd. of Elections, 27 F.3d 563 (4th Cir. 1994).

Cited in Republican Party v. Martin, 980 F.2d 943 (4th Cir. 1992), rehearing denied, 991 F.2d 1202 (4th Cir.), cert. denied, — U.S. —, 114 S. Ct. 93, 126 L. Ed. 2d 60 (1993).

Sec. 12. Jurisdiction of the General Court of Justice.

Legal Periodicals. — For comment, "The Advisory Opinion in North Carolina: 1947 to 1991," see 70 N.C.L. Rev. 1853 (1992).

CASE NOTES

I. General Consideration.
II. Supreme Court.
  A. In General.

I. GENERAL CONSIDERATION.

The subject matter jurisdiction of the clerks of the superior court can only be conferred by statute. In re Locklear, 314 N.C. 412, 334 S.E.2d 46 (1985).

Applied in State v. Freeman, 319 N.C. 609, 356 S.E.2d 765 (1987); State v. Dudley, 319 N.C. 656, 356 S.E.2d 361 (1987); Crist v. Moffatt, 326 N.C. 326, 389 S.E.2d 41 (1990); Travco Hotels, Inc. v. Piedmont Natural Gas Co., 332 N.C. 288, 420 S.E.2d 426 (1992).

Cited in State ex rel. Edmisten v. Tucker, 312 N.C. 326, 323 S.E.2d 294 (1984); L. Harvey & Son Co. v. Harman, 76 N.C. App. 191, 333 S.E.2d 47 (1985); State v. Bolt, 81 N.C. App. 133, 344 S.E.2d 51 (1986); Lea Co. v. North Carolina Bd. of Transp., 317 N.C. 254, 345 S.E.2d 355 (1986); State v. Mitchell, 325 N.C. 539, 385 S.E.2d 324 (1989); In re Doe, 329 N.C. 743, 407 S.E.2d 798 (1991); In re Alamance County Ct. Facilities, 329 N.C. 84, 405 S.E.2d 125 (1991); Republican Party v. Martin, 980 F.2d 943 (4th Cir. 1992), rehearing denied, 991 F.2d 1202 (4th Cir.), cert. denied, — U.S. —, 114 S. Ct. 93, 126 L. Ed. 2d 60 (1993).

II. SUPREME COURT.

A. In General.

Issuance of Remedial Writs, etc. — A judge of the superior court has no authority or jurisdiction to issue a writ of mandamus or prohibition to a district court judge. Those remedies are reserved by subdivision (1) of this section to the Supreme Court. In re Redwine, 312 N.C. 482, 322 S.E.2d 769 (1984).

OPINIONS OF ATTORNEY GENERAL

Authority of Magistrate to Hear Summary Judgment Action Involving Residential Rental-Property. — A magistrate does not have the authority to hear a summary ejectment action involving residential rental property in another county if the landlord and the tenant so provide in the lease. See opinion of Attorney General to Hon. James E. Lanning, Chief District Court Judge, 26th Judicial District, 60 N.C.A.G. 26 (1990).

Sec. 13. Forms of action; rules of procedure.

CASE NOTES

I. General Consideration.
II. Civil Actions.
IV. Rules of Procedure.

I. GENERAL CONSIDERATION.

No procedure or practice of the courts, even those exercised pursuant to their inherent powers, may abridge a person's substantive rights. In re Alamance County Ct. Facilities, 329 N.C. 84, 405 S.E.2d 125 (1991).

Section Compared to N.C. Const., Art. I, § 25. — There is not a conflict between this section and N.C. Const., Art. I, § 25, but this section is more comprehensive. Faircloth v. Beard, 320 N.C. 505, 358 S.E.2d 512 (1987).

N.C. Const., Art. I, § 25 and this section must be read in conjunction with one another. This section merely establishes the form and procedure for the trial of all civil actions, including the procedure of having issues of fact decided by a jury in what were formerly equity proceedings; to determine whether there exists a constitutional right to trial by jury of a particular cause of action, one looks to N.C. Const., Art. I, § 25, which ensures that there is a right to trial by jury where the underlying cause of action existed at the time of adoption of the 1868 Constitution, regardless of whether the action was formerly a proceeding in equity. Kiser v.

Kiser, 325 N.C. 502, 385 S.E.2d 487 (1989).

For examination of historical development of the right to trial by jury, see Kiser v. Kiser, 325 N.C. 502, 385 S.E.2d 487 (1989).

Cited in State v. Hudson, 331 N.C. 122, 415 S.E.2d 732 (1992).

II. CIVIL ACTIONS.

No Right to Jury Trial in Equitable Distribution Action. — No right to bring an action for equitable distribution of marital property existed prior to the adoption of the equitable distribution statutes, §§ 50-20 and 50-21, and the language of the statutes themselves create no new right to trial by jury; therefore, there is no right to trial by jury for such an action under the Constitution of North Carolina. Kiser v. Kiser, 325 N.C. 502, 385 S.E.2d 487 (1989).

Stockholders' Derivative Actions. — Although stockholders' derivative actions may be equitable actions, they are actions to protect private rights and to redress private wrongs; therefore they are civil actions under this section which guarantees that parties to such actions may have questions of fact tried by juries. Faircloth v. Beard, 320 N.C. 505, 358 S.E.2d 512 (1987).

IV. RULES OF PROCEDURE.

The General Assembly was without authority, etc. —

In accord with the main volume. See State v. O'Neal, 77 N.C. App. 600, 335 S.E.2d 920 (1985).

Authority of Superior Courts Where Laws for Duties of District Attorneys Unconstitutional. — The superior court is empowered to review the constitutionality of the statutes which prescribe the duties of the district attorney and to fashion an appropriate remedy should such statutes violate the Constitution. Simeon v. Hardin, 339 N.C. 358, 451 S.E.2d 858 (1994).

Sec. 15. Administration.

CASE NOTES

Cited in In re Doe, 329 N.C. 743, 407 S.E.2d 798 (1991).

Sec. 16. Terms of office and election of Justices of the Supreme Court, Judges of the Court of Appeals, and Judges of the Superior Court.

Defeated Amendment Proposals. — An amendment proposed by Session Laws 1985, c. 768, s. 6 and defeated at the primary election held on May 6, 1986, would have amended this section by adding "except that those elected in 1982, 1984, 1986, and 1988 shall hold office for terms of nine years" at the end of the first sentence.

Legal Periodicals. — For comment on changing North Carolina's method of judicial selection, see 25 Wake Forest L. Rev. 253 (1990).

For article, "Tuesday, February 11, 1868: The Day North Carolina Chose Direct Election of Judges," see 70 N.C.L. Rev. 1825 (1992).

CASE NOTES

Election to Fill Unexpired Judicial Term of Office. — Section 163-9, insofar as it provides for elections of judges to fill only the unexpired portions of eight-year terms, is authorized by N.C. Const., Art. IV, § 19; therefore, it does not violate this section, providing that judges "shall be elected ... and shall hold office for terms of eight years." Brannon v. North Carolina State Bd. of Elections, 331 N.C. 335, 416 S.E.2d 390 (1992).

Session Laws 1987, c. 509, which amended § 7A-41, did not deny certain citizens their "fundamental right" under this section to vote for judges at the expiration of their eight-year terms of office; the right to vote per se is not a fundamental right under North Carolina's Constitution; instead, once the right to vote is conferred, the equal right to vote is a fundamental right. State ex rel. Martin v. Preston, 325 N.C. 438, 385 S.E.2d 473 (1989).

By enacting Session Laws 1987, c. 509, the legislature eliminated staggered terms within multi-seat judicial districts by creating a one-time interim or hiatus between certain terms of office; as the Constitution anticipates such "hold over" situations by providing that elected judges remain in office "until their successors are elected and qualified," the act was not unconstitutional. State ex rel. Martin v. Preston, 325 N.C. 438, 385 S.E.2d 473 (1989).

Quoted in Republican Party v. Hunt, 841 F. Supp. 722 (E.D.N.C.), aff'd sub nom. Republican Party v. North Carolina State Bd. of Elections, 27 F.3d 563 (4th Cir. 1994).

Cited in Republican Party v. Martin, 980 F.2d 943 (4th Cir. 1992), rehearing denied, 991 F.2d 1202 (4th Cir.), cert. denied, — U.S. —, 114 S. Ct. 93, 126 L. Ed. 2d 60 (1993).

Sec. 17. Removal of Judges, Magistrates and Clerks.

CASE NOTES

Cited in In re Doe, 329 N.C. 743, 407 S.E.2d 798 (1991).

Sec. 18. District Attorney and prosecutorial districts.

(1) *District Attorneys.* The General Assembly shall, from time to time, divide the State into a convenient number of prosecutorial districts, for each of which a District Attorney shall be chosen for a term of four years by the qualified voters thereof, at the same time and places as members of the General Assembly are elected. Only persons duly authorized to practice law in the courts of this State shall be eligible for election or appointment as a District Attorney. The District Attorney shall advise the officers of justice in his district, be responsible for the prosecution on behalf of the State of all criminal actions in the Superior Courts of his district, perform such duties related to appeals therefrom as the Attorney General may require, and perform such other duties as the General Assembly may prescribe.

(2) *Prosecution in District Court Division.* Criminal actions in the District Court Division shall be prosecuted in such manner as the General Assembly may prescribe by general law uniformly applicable in every local court district of the State. (1973, c. 394, s. 1; 1983, c. 298, s. 2.)

Effect of Amendments. —

The amendment adopted by vote of the people at the general election held November 6, 1984, effective January 1, 1985, inserted the present second sentence of subsection (1).

Defeated Amendment Proposals. —

An amendment proposed by Session Laws 1985, c. 768, s. 7, and defeated at the primary election held on May 6, 1986, would have amended this section by adding "except that those elected in 1986 and 1988 shall serve for a term of five years" at the end of the first sentence of subsection (1).

An amendment proposed by Session Laws 1985, c. 768, s. 9.1(1), and defeated at the primary election held on May 6, 1986, would have amended this section by adding "except in 1988 at the same time and places as members of the

United States House of Representatives are elected" at the end of the first sentence of subsection (1).

CASE NOTES

The clear mandate of this section is that the responsibility and authority to prosecute all criminal actions in the superior courts is vested solely in the several district attorneys of the State. State v. Camacho, 329 N.C. 589, 406 S.E.2d 868 (1991).

Delegation of Prosecutorial Function. — The elected district attorney may, in his or her discretion and where otherwise permitted by law, delegate the prosecutorial function to others. State v. Camacho, 329 N.C. 589, 406 S.E.2d 868 (1991).

Authority of Trial Court Exceeded. — The trial court exceeded its authority and invaded the province of an independent constitutional officer when it ordered the district attorney to request that the Attorney General prosecute defendant in a capital case. State v. Camacho, 329 N.C. 589, 406 S.E.2d 868 (1991).

The trial court exceeded its authority by ordering that in order to avoid the possibility or impression of any conflict of interest, the district attorney and his entire staff must withdraw from a capital case and have no further participation either directly or indirectly with regard to the case. State v. Camacho, 329 N.C. 589, 406 S.E.2d 868 (1991).

When § 114-11.6 is read in pari materia with this section, it is apparent that our Constitution and statutes give the district attorneys of the State the exclusive discretion and authority to determine whether to request, and thus permit, the prosecution of any individual case by the Special Prosecution Division. State v. Camacho, 329 N.C. 589, 406 S.E.2d 868 (1991).

Section 114-11.6 authorizes the several elected district attorneys of the State to permit the Special Prosecution Division of the Office of the Attorney General to prosecute individual criminal cases in their prosecutorial districts. State v. Camacho, 329 N.C. 589, 406 S.E.2d 868 (1991).

Standing to Challenge District Attorney's Participation Lacking. — Magistrate did not have standing to challenge involvement of the District Attorney in magistrate's removal proceeding, where, had trial court the inherent authority to appoint an independent counsel, magistrate could not show that a different result would have occurred. In re Ezzell, 113 N.C. App. 388, 438 S.E.2d 482 (1994).

Quoted in Simeon v. Hardin, 339 N.C. 358, 451 S.E.2d 858 (1994).

Cited in State v. Rogers, 68 N.C. App. 358, 315 S.E.2d 492 (1984).

Sec. 19. Vacancies.

Unless otherwise provided in this Article, all vacancies occurring in the offices provided for by this Article shall be filled by appointment of the Governor, and the appointees shall hold their places until the next election for members of the General Assembly that is held more than 60 days after the vacancy occurs, when elections shall be held to fill the offices. When the unexpired term of any of the offices named in this Article of the Constitution in which a vacancy has occurred, and in which it is herein provided that the Governor shall fill the vacancy, expires on the first day of January succeeding the next election for members of the General Assembly, the Governor shall appoint to fill that vacancy for the unexpired term of the office. If any person elected or appointed to any of these offices shall fail to qualify, the office shall be appointed to, held, and filled as provided in case of vacancies occurring therein. All incumbents of these offices shall hold until their successors are qualified. (1985 (Reg. Sess., 1986), c. 920, s. 2.)

Effect of Amendments. — The amendment adopted by vote of the people at the general election held Nov. 4, 1986, effective Jan. 1, 1987, substituted "60 days" for "30 days" in the first sentence.

CASE NOTES

Nonexclusive Provision. — This section does not exclusively govern the appointment of district court judges. Baker v. Martin, 330 N.C. 331, 410 S.E.2d 887 (1991).

Preference May Be Given to Political Party of Vacating Judge. — The General Assembly may require that in the interim appointment of a district court judge preference must be given to a member of the same political party as the vacating judge. Baker v. Martin, 330 N.C. 331, 410 S.E.2d 887 (1991).

Section 7A-142, which provides that candidates for a vacancy in the office of a district judge shall be members of the same political party as the vacating judge does not violate the Constitution of North Carolina. Baker v. Martin, 330 N.C. 331, 410 S.E.2d 887 (1991).

Election to Fill Unexpired Judicial Term of Office. — Section 163-9, insofar as it provides for elections of judges to fill only the unexpired portions of eight-year terms, is authorized by this section; therefore, it does not violate N.C. Const., Art. IV, § 16, providing that judges "shall be elected ... and shall hold office for terms of eight years." Brannon v. North Carolina State Bd. of Elections, 331 N.C. 335, 416 S.E.2d 390 (1992).

Applied in State ex rel. Martin v. Preston, 325 N.C. 438, 385 S.E.2d 473 (1989).

Sec. 22. Qualification of Justices and Judges.

CASE NOTES

Cited in Baker v. Martin, 330 N.C. 331, 410 S.E.2d 887 (1991).

ARTICLE V

FINANCE

Section 1. No capitation tax to be levied.

CASE NOTES

Article V prohibits the judiciary from taking public moneys without statutory authorization. In re Alamance County Ct. Facilities, 329 N.C. 84, 405 S.E.2d 125 (1991).

Sec. 2. State and local taxation.

Cross References. — For provisions authorizing counties and cities to contract with and appropriate money to private entities in order to carry out any authorized public purpose, see §§ 153A-449 and 160A-20.1, respectively.

Legal Periodicals. —

For article, "All the News That's Fit to Tax: First Amendment Limitations on State and Local Taxation of the Press," see 21 Wake Forest L. Rev. 59 (1985).

For note on the North Carolina sales and use tax exemption for newspapers, in light of In re Village Publishing Corp., 312 N.C. 211, 322 S.E.2d 155 (1984), appeal dismissed, 472 U.S. 1001, 105 S. Ct. 2693, 86 L. Ed. 2d 710 (1985), see 21 Wake Forest L. Rev. 145 (1985).

For article on mail-order ministries under the § 170 charitable contribution deduction, see 11 Campbell L. Rev. 1 (1988).

For note, "Municipal Ownership of Cable Television Systems: Madison

Cablevision, Inc. v. City of Morganton," see 68 N.C.L. Rev. 1295 (1990).

For note, "State v. Whittle Communications: Allowing Local School Boards To Turn On 'Channel One'," see 70 N.C.L. Rev. 1929 (1992).

CASE NOTES

I. General Consideration.
II. Power of Taxation.
III. Public Purposes.
  A. In General.
  B. Illustrative Cases.
IV. Classification.
  A. In General.
  B. Illustrative Cases.

I. GENERAL CONSIDERATION.

Laches as Bar to Constitutional Challenge to 1970 Amendments. — Where more than 18 years elapsed between the 1970 ballot and the defendants' claim of unconstitutionality of the 1970 amendments and where taxpayer stated that he did not recognize the effects of the amendment until his taxes rose in 1985, he did not claim that he was precluded from ascertaining the import of the amendment or the constitutionality of its passage before 1985, or until January 8, 1989, when he filed his answer, a county was materially prejudiced by the defendants' delay because the passage of time prevented the county from presenting evidence supporting the fact that the ballot was understandable to voters. Franklin County v. Burdick, 103 N.C. App. 496, 405 S.E.2d 783 (1991).

While the mere passage of years does not in itself entitle the plaintiff to the bar of laches, an unreasonable length of time resulting in prejudice to the opposing party does so entitle the plaintiff. Franklin County v. Burdick, 103 N.C. App. 496, 405 S.E.2d 783 (1991).

Drainage district assessments are not taxes. Northampton County Drainage Dist. Number One v. Bailey, 326 N.C. 742, 392 S.E.2d 352 (1990).

The North Carolina Sales and Use Tax Act does not violate the equal protection clause of U.S. Const., Amend. XIV or the principle of equitable taxation found in this section. In re Assessment of Additional N.C. & Orange County Use Taxes, 312 N.C. 211, 322 S.E.2d 155 (1984), appeal dismissed, 472 U.S. 1001, 105 S. Ct. 2693, 86 L. Ed. 2d 710 (1985).

A bailment surcharge imposed on each case of distilled spirits shipped from ABC warehouse to ABC stores is not a tax; the cost of liquor enforcement is a burden incident to the privilege of buying spirituous liquors in the State and such a surcharge is not unconstitutional as a tax imposed in violation of N.C. Const., Art. II, § 23 or of this section. North Carolina Ass'n of ABC Bds. v. Hunt, 76 N.C. App. 290, 332 S.E.2d 693, cert. denied, 314 N.C. 667, 336 S.E.2d 400 (1985).

Council Could Not Be Estopped From Terminating Unauthorized Payments Without Notice. — Where a town's resolution appropriating a certain percentage of its alcoholic beverage control revenue to county school board was outside the authority of the town council, the town council could not be estopped from terminating the unauthorized payments without notice. Watauga County Bd. of Educ. v. Town of Boone, 106 N.C. App. 270, 416 S.E.2d 411 (1992).

Applied in State v. Whittle Communications, 328 N.C. 456, 402 S.E.2d 556 (1991).

Quoted in In re City of Durham Annexation Ordinance Numbered 5991 for Area A, 69 N.C. App. 77, 316 S.E.2d 649 (1984).

Stated in Hed, Inc. v. Powers, 84 N.C. App. 292, 352 S.E.2d 265 (1987).

Cited in Cheape v. Town of Chapel Hill, 320 N.C. 549, 359 S.E.2d 792 (1987); Barnhill San. Serv., Inc. v. Gaston County, 87 N.C. App. 532, 362 S.E.2d 161 (1987); In re Worley, 93 N.C. App. 191, 377 S.E.2d 270 (1989); In re Moravian Home, Inc., 95 N.C. App. 324, 382 S.E.2d 772 (1989); Thrash v. City of Asheville, 95 N.C. App. 457, 383 S.E.2d 657 (1989).

II. POWER OF TAXATION.

Application of § 105-116 to Electric Cooperative Did Not Violate Rights. — Section 105-116 taxes billings for electrical service rendered by cooperatives in the same manner as billings for service rendered by investor-owned utilities; therefore, application of the section to an electric cooperative did not violate that entity's right under N.C. Const., Art. I, § 19, this section, or N.C. Const., Art. V, § 3. Four County Elec. Membership Corp. v. Powers, 96 N.C. App. 417, 386 S.E.2d 107 (1989), cert. denied and appeal dismissed, 326 N.C. 799, 393 S.E.2d 894 (1990), cert. denied, 498 U.S. 1040, 111 S. Ct. 711, 112 L. Ed. 2d 700 (1991).

III. PUBLIC PURPOSES.

A. In General.

Meaning of "Public Purpose". — Although Mitchell v. North Carolina Indus. Dev. Fin. Auth., 273 N.C. 137, 159 S.E. 2d 745 (1968), and its progeny remain pivotal in the development of the doctrine, they do not purport to establish a permanent test for determining the existence of a public purpose. Maready v. City of Winston-Salem, 342 N.C. 708, 467 S.E.2d 615 (1996).

B. Illustrative Cases.

Cable Television System as Public Purpose. — The provisions of Chapter 160A, Article 16, Part 1, which authorize cities to finance, acquire, construct, own, and operate a cable television system do not violate the "public purpose" clause of this section. Madison Cablevision, Inc. v. City of Morganton, 325 N.C. 634, 386 S.E.2d 200 (1989).

The establishment, financing, construction, operation, and maintenance of a cable television system by a municipality as authorized by Chapter 160A, Article 16, Part 1 involved a reasonable connection with the convenience and necessity of the city and benefited the public generally, as opposed to special interests or persons, and thus constituted a "public purpose" within the meaning of subsection (1) of this section. Madison Cablevision, Inc. v. City of Morganton, 325 N.C. 634, 386 S.E.2d 200 (1989).

IV. CLASSIFICATION.

A. In General.

Requirement of Uniformity Extends, etc. — Although the uniformity requirement is literally confined to taxes on property, it extends to license, franchise and other taxes. First Carolina Investors v. Lynch, 78 N.C. App. 583, 337 S.E.2d 691 (1985).

Discretion in Classification. — The power to classify subjects of taxation carries with it the discretion to select them, and a wide latitude is accorded taxing authorities. In re Champion Int'l Corp., 74 N.C. App. 639, 329 S.E.2d 691, cert. denied and appeal dismissed, 314 N.C. 540, 335 S.E.2d 15 (1985).

Reasonableness of Classification. —

The only limitation upon the power of classification is that the classification be founded upon reasonable, and not arbitrary, distinctions. In re Champion Int'l Corp., 74 N.C. App. 639, 329 S.E.2d 691, cert. denied and appeal dismissed, 314 N.C. 540, 335 S.E.2d 15 (1985).

A classification will be upheld if it is reasonable and not arbitrary and rests upon some ground of difference having a fair and substantial relation to the object of the legislation, so that all persons similarly circumstanced will be treated alike. First Carolina Investors v. Lynch, 78 N.C. App. 583, 337 S.E.2d 691 (1985).

On review, wide latitude is accorded the General Assembly; the only limitation on its power is that the classification must be founded upon reasonable, and not arbitrary, distinctions. State v. Rippy, 80 N.C. App. 232, 341 S.E.2d 98 (1986).

Courts to Determine Validity of Classifications. — The uniformity rule of this section requires the courts, when the validity of a tax statute is challenged on the ground of discrimination, to ascertain if in fact there is a difference in the classes taxed. First Carolina Investors v. Lynch, 78 N.C. App. 583, 337 S.E.2d 691 (1985).

Contention that § 105-282.7 was invalid because its effect was to tax only the appellant was without merit, as on its face § 105-282.7 uniformly operates without discrimination or distinction upon all persons composing the described class, and as even appellant's own evidence did not show that the law applied only to appellant, but merely established that no one knew whether the statute had been applied to other taxpayers during the one year it had been in effect. In re Champion Int'l Corp., 74 N.C. App. 639, 329 S.E.2d 691, cert. denied and appeal dismissed, 314 N.C. 540, 335 S.E.2d 15 (1985).

Subsection (32) of § 105-275 does not discriminate against individual property owners who own their property for residential purposes in violation of the rule of uniformity in taxation established under this Article. In re

Barbour, 112 N.C. App. 368, 436 S.E.2d 169 (1993).

B. Illustrative Cases.

Assessment of tax under § 105-114 against a business trust did not violate the uniformity requirement of this section on grounds that it was similar to a limited partnership, which is not subject to the franchise tax. First Carolina Investors v. Lynch, 78 N.C. App. 583, 337 S.E.2d 691 (1985).

The capture of supplier refunds for use in establishing an expansion fund does not constitute a tax that violates the requirements of N.C. Const., Art. V, § 2. State ex rel. Utils. Comm'n v. Carolina Util. Customers Ass'n, 336 N.C. 657, 446 S.E.2d 332 (1994).

Leasehold Interests in Government Owned Croplands and Forestlands. — Classifying for taxation under § 105-282.7 leasehold interests in government owned croplands and forestlands that are used in connection with a business conducted for profit seems eminently reasonable. In re Champion Int'l Corp., 74 N.C. App. 639, 329 S.E.2d 691, cert. denied and appeal dismissed, 314 N.C. 540, 335 S.E.2d 15 (1985).

Subsections (1) and (2) of this section, which require that taxation be done in a just and equitable manner and that no class of property be taxed except by uniform rule and that every classification be made by general law, are no bar to taxing lessee and users in forest lands owned by the State, under § 105-282.7, "to the same extent as if the lessee or user owned the property," while other leasehold interests are taxed at true value. In re Champion Int'l Corp., 74 N.C. App. 639, 329 S.E.2d 691, cert. denied and appeal dismissed, 314 N.C. 540, 335 S.E.2d 15 (1985).

Section 113-156.1, requiring managers of ocean fishing piers to obtain a license, satisfies the requirements of uniformity, equal protection and due process under both the State and federal Constitutions, as the opportunity to establish an exclusive zone around ocean piers, pursuant to § 113-185(a), and the cost to the State of enforcing this zone, distinguishes ocean piers from other piers and provides reasonable grounds for their separate license tax classification. State v. Rippy, 80 N.C. App. 232, 341 S.E.2d 98 (1986).

OPINIONS OF ATTORNEY GENERAL

Appropriation for a water project which would provide a private industry with fire protection and a private water supplier and town with increased water service was for a public purpose in compliance with this section. See opinion of Attorney General to Mr. Steve B. Settlemeyer, City Attorney, 59 N.C.A.G. 12 (1989).

Local School Administrative Unit Levying Taxes at Local Level. — The legislature may by statute, consistently with the Constitution, provide that a local school administrative unit may levy taxes at the local level but such taxing authority must be conferred either by a general law, applicable statewide, or by local act subject to a vote of those persons affected. See opinion of Attorney General to Mr. John B. Dunn, Superintendent, Edenton-Chowan Schools, 60 N.C.A.G. 17 (1990).

Sec. 3. Limitations upon the increase of State debt.

CASE NOTES

I. In General.

I. IN GENERAL.

Application of § 105-116 to Electric Cooperative Did Not Violate Rights. — Section 105-116 taxes billings for electrical service rendered by cooperatives in the same manner as billings for service rendered by investor-owned utilities; therefore, application of the section to an electric cooperative did not violate that an entity's right under N.C. Const., Art. I, § 19, this section or N.C. Const., Art. V, § 2. Four County Elec. Membership Corp. v. Powers, 96 N.C. App. 417, 386 S.E.2d 107 (1989), cert. denied and appeal dismissed, 326 N.C. 799, 393

S.E.2d 894 (1990), cert. denied, 498 U.S. 1040, 111 S. Ct. 711, 112 L. Ed. 2d 700 (1991).

Sec. 4. Limitations upon the increase of local government debt.

CASE NOTES

I. Decisions under Current Section.

I. DECISIONS UNDER CURRENT SECTION.

Sections 159-72 and 159-78, which allow municipalities to issue general obligation refunding bonds in an amount greater than the bonds to be refunded, without a vote of the people, do not violate this section. City of Concord v. All Owners of Taxable Property, 330 N.C. 429, 410 S.E.2d 482 (1991).

Refund of Valid Existing Debt. — Subdivision (2)(a) of this section provides that voter approval is not required if a municipality's purpose for contracting a debt is to refund a valid existing debt; there is no requirement that the refunding indebtedness be less than or equal to the outstanding indebtedness. City of Concord v. All Owners of Taxable Property, 330 N.C. 429, 410 S.E.2d 482 (1991).

Contract Granting Security Interest in Real Property Subject to Improvement. — Section 160A-20, which authorizes a local government unit to enter into a contract granting a security interest in real property subject to improvement, does not contravene this section. Wayne County Citizens v. Wayne County Bd. of Comm'rs, 328 N.C. 24, 399 S.E.2d 311 (1991).

Sec. 5. Acts levying taxes to state objects.

CASE NOTES

Section 113-156.1 does not violate this section, which provides that every act of the General Assembly levying a tax shall state the special object to which it is to be applied and that it shall be applied to no other purpose, as it is part of Subchapter IV of Chapter 113, the special purpose of which is the conservation of marine and estuarine and wildlife resources, and it is evident that the license tax is levied and applied for this purpose. State v. Rippy, 80 N.C. App. 232, 341 S.E.2d 98 (1986).

Sec. 10. Joint ownership of generation and transmission facilities.

CASE NOTES

Cited in State ex rel. Utils. Comm'n v. Carolina Util. Customers Ass'n, 314 N.C. 171, 333 S.E.2d 259 (1985); State ex rel. Utils. Comm'n v. Eddleman, 320 N.C. 344, 358 S.E.2d 339 (1987).

Sec. 11. Capital projects for agriculture.

Editor's Note. —

Session Laws 1985 (Reg. Sess., 1986), c. 814, s. 1 and c. 933, s. 1 both added new sections to N.C. Const., Art. V. These amendments were adopted by vote of the people at the election held Nov. 4, 1986, and have been designated N.C. Const., Art. V, §§ 12 and 13 at the direction of the Revisor of Statutes.

Sec. 12. Higher education facilities.

Notwithstanding any other provisions of this Constitution, the General Assembly may enact general laws to authorize the State or any State entity to issue revenue bonds to finance and refinance the cost of acquiring, constructing, and financing higher education facilities to be operated to serve and benefit the public for any nonprofit private corporation, regardless of any church or religious relationship provided no cost incurred earlier than five years prior to the effective date of this section shall be refinanced. Such bonds shall be payable from any revenues or assets of any such nonprofit private corporation pledged therefor, shall not be secured by a pledge of the full faith and credit of the State or such State entity or deemed to create an indebtedness requiring voter approval of the State or such entity, and, where the title to such facilities is vested in the State or any State entity, may be secured by an agreement which may provide for the conveyance of title to, with or without consideration, such facilities to the nonprofit private corporation. The power of eminent domain shall not be used pursuant hereto. (1985 (Reg. Sess., 1986), c. 814.)

Cross References. — For the Higher Educational Facilities Finance Act, see § 115E-1 et seq.

Editor's Note. — This section was added by constitutional amendment adopted by vote of the people at the election held Nov. 4, 1986, and became effective November 25, 1986.

Sec. 13. Seaport and airport facilities.

(1) Notwithstanding any other provision of this Constitution, the General Assembly may enact general laws to grant to the State, counties, municipalities, and other State and local governmental entities all powers useful in connection with the development of new and existing seaports and airports, and to authorize such public bodies:

(a) To acquire, construct, own, own jointly with public and private parties, lease as lessee, mortgage, sell, lease as lessor, or otherwise dispose of lands and facilities and improvements, including undivided interests therein;

(b) To finance and refinance for public and private parties seaport and airport facilities and improvements which relate to, develop or further waterborne or airborne commerce and cargo and passenger traffic, including commercial, industrial, manufacturing, processing, mining, transportation, distribution, storage, marine, aviation and environmental facilities and improvements; and

(c) To secure any such financing or refinancing by all or any portion of their revenues, income or assets or other available monies associated with any of their seaport or airport facilities and with the facilities and improvements to be financed or refinanced, and by foreclosable liens on all or any part of their properties associated with any of their seaport or airport facilities and with the facilities and improvements to be financed or refinanced, but in no event to create a debt secured by a pledge of the faith and credit of the State or any other public body in the State. (1985 (Reg. Sess., 1986), c. 933, s. 1.)

Cross References. — As to specific powers of municipalities, see § 63-53. For the North Carolina Global TransPark Authority Act, see § 63A-1 et seq.

Editor's Note. — This section was added by constitutional amendment adopted by vote of the people at the election held Nov. 4, 1986, and became effective November 25, 1986.

As enacted and adopted, this section contained the designation "(1)," but no designation "(2)."

Sec. 14. Not in effect.

Defeated Amendment Proposal. — An amendment proposed by Session Laws 1993, c. 497, s. 1, and defeated at the election held November 2, 1993, would have added a new § 14 relating to the authority of any county, city or town to borrow money, without the need of voter approval, and issue financing bonds to be used to finance public activities associated with private economic development projects.

ARTICLE VI

SUFFRAGE AND ELIGIBILITY TO OFFICE

Sec. 2. Qualifications of voter.

CASE NOTES

Stated in United States v. McLean, 904 F.2d 216 (4th Cir. 1990).

Cited in Farnsworth v. Jones, 114 N.C. App. 182, 441 S.E.2d 597 (1994).

OPINIONS OF ATTORNEY GENERAL

Nolo Contendere Plea Brings No Forfeiture of Rights. — At least under the wording of N.C. Const., Art. VI, § 2, a plea of nolo contendere or "no contest" to a felony charge would not result in the forfeiture of any rights of citizenship, including the right to vote. See opinion of Attorney General to Ms. Bessie J. Cherry, Clerk of Court, Washington, North Carolina, 49 N.C.A.G. 134 (1980).

Sec. 6. Eligibility to elective office.

Legal Periodicals. — For note, "Baker v. Martin and the Constitutionality of Partisan Qualifications for Appointment to District Courts," see 70 N.C.L. Rev. 1916 (1992).

CASE NOTES

The words "by the people" make it clear the section refers to the process of election. Baker v. Martin, 330 N.C. 331, 410 S.E.2d 887 (1991).

Section Refers to Election to Office. — The history of this section supports the conclusion that it is meant to refer to an "election to office" situation rather than to appointment to an "elective office." Baker v. Martin, 330 N.C. 331, 410 S.E.2d 887 (1991).

Subsection (a) of this section imposes an unconstitutional additional qualification for election to office, contrary to the provisions of this section. Moore v. Knightdale Bd. of Elections, 331 N.C. 1, 413 S.E.2d 541 (1992).

Preference May Be Given to Political Party of Vacating Judge. — Section 7A-142, which provides that candidates for a vacancy in the office of a district judge shall be members of the same political party as the vacating judge, does not violate the Constitution of North Carolina. Baker v. Martin, 330 N.C. 331, 410 S.E.2d 887 (1991).

Sec. 8. Disqualifications for office.

Legal Periodicals. — For essay, "Something There Is That Doesn't Love a Wall: Reflections on the History of North Carolina's Religious Test for Public Office," see 64 N.C.L. Rev. 1071 (1986).

CASE NOTES

Additional Disqualifications. — The wording of this section does not necessarily imply that additional disqualifications cannot be added by the General Assembly for those persons not elected by the people. Instead this section merely enumerates three disqualifications, one of which applies only to offices filled by election by the people. Baker v. Martin, 330 N.C. 331, 410 S.E.2d 887 (1991).

Stated in United States v. McLean, 904 F.2d 216 (4th Cir. 1990).

OPINIONS OF ATTORNEY GENERAL

Nolo Contendere Plea Brings No Forfeiture of Rights. — At least under the wording of N.C. Const., Art. VI, § 2, a plea of nolo contendere or "no contest" to a felony charge would not result in the forfeiture of any rights of citizenship, including the right to vote. See opinion of Attorney General to Ms. Bessie J. Cherry, Clerk of Court, Washington, North Carolina, 49 N.C.A.G. 134 (1980).

Sec. 9. Dual office holding.

CASE NOTES

Effect of Local Law. — Chapter 129 of the 1983 N.C. Laws, insofar as it provides for dual office holding in a local law, is unconstitutional. Ratcliff v. County of Buncombe, 663 F. Supp. 1003 (W.D.N.C. 1987).

Quoted in Moore v. Knightdale Bd. of Elections, 331 N.C. 1, 413 S.E.2d 541 (1992).

Cited in Ratcliff v. County of Buncombe, 759 F.2d 1183 (4th Cir. 1985).

OPINIONS OF ATTORNEY GENERAL

Police Officer Holding Position as Elected Officer. — A person holding an appointive office as a police officer can concurrently hold a position as an elected officer in either State or local government, including as a school board member. See opinion of Attorney General to Captain Bobby Kilgore, Monroe Public Safety Department, 55 N.C.A.G. 34 (1985).

Service of County Commissioner or Board or Commission. — Under § 128-1.2, whenever a board of county commissioners appoints one of its own members to another board or commission, the county commissioner so appointed is considered to be serving on such board or commission as a part of his or her office as a county commissioner. See opinion of Attorney General to C. Preston Cornelius, Senior Resident, Superior Court Judge, 60 N.C.A.G. 50 (1990).

Sec. 10. Continuation in office.

CASE NOTES

Quoted in Moore v. Knightdale Bd. of Elections, 331 N.C. 1, 413 S.E.2d 541 (1992).

ARTICLE VII

LOCAL GOVERNMENT

Section 1. General Assembly to provide for local government.

Legal Periodicals. — For 1984 survey, "Competitive Annexation Among Municipalities: North Carolina Adopts the Prior Jurisdiction Rule," see 63 N.C.L. Rev. 1260 (1985).

CASE NOTES

Counties, Cities and Towns, etc. — This section gives the General Assembly the authority to provide for the organization and government of counties, including the granting of such powers and duties to the counties as it deems advisable. As an agent of the State, a county has no inherent power, but may exercise only those powers prescribed by statute and those necessarily implied by law. In re Easement of Right of Way, 90 N.C. App. 303, 368 S.E.2d 639 (1988).

Council Could Not Be Estopped From Terminating Unauthorized Payments Without Notice. — Where a town's resolution appropriating a certain percentage of its alcoholic beverage control revenue to county school board was outside the authority of the town council, the town council could not be estopped from terminating the unauthorized payments without notice. Watauga County Bd. of Educ. v. Town of Boone, 106 N.C. App. 270, 416 S.E.2d 411 (1992).

Annexation Provisions Not Invalid as Special Legislation. — Sections 160A-45 et seq. do not violate N.C. Const., Art. II, § 24, which prohibits the General Assembly from enacting "any local, private, or special act or resolution" in regard to certain enumerated subjects. This constitutional provision does not apply to annexation proceedings by municipalities, since this section authorizes the General Assembly "except as otherwise prohibited by this Constitution" to "give such powers and duties to counties, cities, and towns and other governmental subdivisions as it may deem advisable," and no other provision of the Constitution prohibits the General Assembly from enacting special legislation for the annexation of areas by municipalities. Campbell v. City of Greensboro, 70 N.C. App. 252, 319 S.E.2d 323, cert. denied and appeal dismissed, 312 N.C. 492, 322 S.E.2d 553 (1984).

Annexation of Land Without Annexing Similar Land. — It is not a denial of the equal protection of the law for a city to annex land without annexing other land similarly situated. Piedmont Ford Truck Sale, Inc. v. City of Greensboro, 324 N.C. 499, 380 S.E.2d 107 (1989).

Acts Determining Responsibility for Enforcement of Laws Affecting Health Unconstitutional. — Inspections pursuant to the State Building Code affect health and sanitation, thus acts that altered the legislative directive of § 160A-411 that the city shall determine who will perform the inspections under the Code were local legislation that shifted responsibility for enforcement of laws affecting the health of the public and were barred under Art. II, § 24 of the Constitution. City of New Bern v. New Bern-Craven County Bd. of Educ., 338 N.C. 430, 450 S.E.2d 735 (1994).

Quoted in In re City of Durham Annexation Ordinance Numbered 5991 for Area A, 69 N.C. App. 77, 316 S.E.2d 649 (1984).

Cited in Piedmont Ford Truck Sales, Inc. v. City of Greensboro, 90 N.C. App. 692, 370 S.E.2d 262 (1988).

Sec. 2. Sheriffs.

Defeated Amendment Proposal. — An amendment proposed by Session Laws 1985, c. 768, ss. 9.1(2) and (10), and defeated at the primary election held on May 6, 1986, would have amended this section by inserting "except in 1988 at the same time and places as members of the United States House of Representatives are elected" following "General Assembly are enacted," and by adding "except that those elected in 1986 or 1988 shall serve for terms of five years" at the end of the section.

CASE NOTES

Sheriffs Are Local Officers. — In providing for the organization of local governments, the N.C. Constitution does not make sheriffs state rather than local officers; therefore, Industrial Commission did not have jurisdiction to hear claims of negligence against county sheriffs. Hull v. Oldham, 104 N.C. App. 29, 407 S.E.2d 611, cert. denied, 330 N.C. 441, 412 S.E.2d 72 (1991).

Cited in Messick v. Catawba County, 110 N.C. App. 707, 431 S.E.2d 489 (1993); Durham Herald Co. v. County of Durham, 334 N.C. 677, 435 S.E.2d 317 (1993).

OPINIONS OF ATTORNEY GENERAL

Confiscated Drugs. — If federal authorities confiscate drug related property and thereafter return a part of it to local authorities for law enforcement purposes, the North Carolina Constitution and laws do not require these funds to go to the local school board as forfeited property and they may be used by local law enforcement. See opinion of the Attorney General to Mr. Aubrey S. Tomlinson, Jr., Attorney for Franklin County, 58 N.C.A.G. 51 (1988).

ARTICLE VIII

CORPORATIONS

Section 1. Corporate charters.

CASE NOTES

Cited in In re City of Durham Annexation Ordinance Numbered 5991 for Area A, 69 N.C. App. 77, 316 S.E.2d 649 (1984).

ARTICLE IX

EDUCATION

Section 1. Education encouraged.

Legal Periodicals. —
For note, "Delconte v. State: Some Thoughts on Home Education," see 64 N.C.L. Rev. 1302 (1986).

CASE NOTES

Education is a governmental function so fundamental in this state that our constitution contains a separate article entitled "Education." Rowan County Bd. of Educ. v. United States Gypsum Co., 332 N.C. 1, 418 S.E.2d 648 (1992).

Quoted in Faulkner v. New Bern-Craven County Bd. of Educ., 311 N.C. 42, 316 S.E.2d 281 (1984).

Cited in Guilford County Bd. of Educ. v. Guilford County Bd. of Elections, 110 N.C. App. 506, 430 S.E.2d 681 (1993).

Sec. 2. Uniform system of schools.

Legal Periodicals. —

For note, "State v. Whittle Communications: Allowing Local School Boards to Turn on 'Channel One'," see 70 N.C.L. Rev. 1929 (1992).

CASE NOTES

Intent. — By mandating equal opportunities for all students, the framers of the Constitution and the voters that adopted it were emphasizing that the days of "separate but equal" education in this State were over, and that the people of this State were committed to providing all students with equal access to full participation in public schools, regardless of race or other classification. Britt v. North Carolina State Bd. of Educ., 86 N.C. App. 282, 357 S.E.2d 432, appeal dismissed, 320 N.C. 790, 361 S.E.2d 71 (1987).

The "uniformity" required under the "general and uniform" clause in subdivision (1) is system uniformity, not spending or programming uniformity. Leandro v. State, 122 N.C. App. 1, 468 S.E.2d 543 (1996).

Equal access to participation in the public school system is a fundamental right, etc. —

The fundamental right that is guaranteed by the Constitution is equal access to public schools; that is, every child has a fundamental right to receive an education in public schools. Britt v. North Carolina State Bd. of Educ., 86 N.C. App. 282, 357 S.E.2d 432, appeal dismissed, 320 N.C. 790, 361 S.E.2d 71 (1987).

The fundamental right under the North Carolina Constitution is limited to one of equal access to education, and it does not embrace a qualitative standard. Leandro v. State, 122 N.C. App. 1, 468 S.E.2d 543 (1996).

Equal Opportunities. — Plaintiff's claim under the "equal opportunities" clause of subdivision (1) was foreclosed by the court's decision in Britt v. N.C. State Board of Education, 86 N.C.App. 282, 357 S.E.2d 432 (1987). Leandro v. State, 122 N.C. App. 1, 468 S.E.2d 543 (1996).

A student's right to an education may be constitutionally denied when it is outweighed by the school's interest in protecting other students, teachers, and school property, and in preventing the disruption of the educational system. In re Jackson, 84 N.C. App. 167, 352 S.E.2d 449 (1987).

As a general rule, a student may be constitutionally suspended or expelled for misconduct, whenever the conduct is of a type the school may legitimately prohibit, and procedural due process is provided. In re Jackson, 84 N.C. App. 167, 352 S.E.2d 449 (1987).

State Has Responsibility for Overseeing Public Schools. — Under the Constitution, the State is given responsibility for overseeing the public schools of this State in order to ensure that every student in the State receives the education to which he or she is entitled. Britt v. North Carolina State Bd. of Educ., 86 N.C. App. 282, 357 S.E.2d 432, appeal dismissed, 320 N.C. 790, 361 S.E.2d 71 (1987).

Contract for Current Affairs Video Not Unconstitutional. — A local school board's contract with the developer of a short current affairs video did not violate this section; students were not required to watch the program and therefore were not being made to pay for the contract with the time they spent watching it. State v. Whittle Communications, 328 N.C. 456, 402 S.E.2d 556 (1991).

Exit Tuition Fee for Transfer. — County Board of Education could not require the payment of an exit tuition fee as a condition to approving the transfer of a county resident student to a school system in a different county, as the exit tuition fee is not provided for by the constitution and statutes of this State. Streeter v. Greene County Bd. of Educ., 115 N.C. App. 452, 446 S.E.2d 107 (1994).

Distribution of Funds. —

Action for declaratory and injunctive relief brought by minors who were, or would be in the future, enrolled in public schools in the county, and their parents or legal guardians, alleging that the present statutory system of financing public schools in this State resulted in inequities in educational programs and facilities between the public schools within that county, which had a relatively low tax base from which to draw funds, and those in other counties with relatively high tax bases, and that the operation of five separate school systems in that county prohibited effective use of facilities and staff and promoted inequitable use of state and local funds, thus depriving them of equal opportunity to a free public school education in violation of subsection (1) of this section, and N.C. Const., Art. I, §§ 1, 15 and 19, failed to allege facts entitling them to relief or conferring jurisdiction on the courts of this State. Britt v. North Carolina State Bd. of Educ., 86 N.C. App. 282, 357 S.E.2d 432, appeal dismissed, 320 N.C. 790, 361 S.E.2d 71 (1987).

Consolidation Upheld. — Act to consolidate existing school administrative units did not violate subdivision (1) of this section of the Constitution. Guilford County Bd. of Educ. v. Guilford County Bd. of Elections, 110 N.C. App. 506, 430 S.E.2d 681 (1993).

Minimum funding requirement of act to consolidate existing school administrative units did not violate subsection (2) of this section. Guilford County Bd. of Educ. v. Guilford County Bd. of Elections, 110 N.C. App. 506, 430 S.E.2d 681 (1993).

Quoted in Rowan County Bd. of Educ. v. United States Gypsum Co., 332 N.C. 1, 418 S.E.2d 648 (1992).

Cited in Moore v. Wykle, 107 N.C. App. 120, 419 S.E.2d 164.

OPINIONS OF ATTORNEY GENERAL

As to the rights of a student to attend the school system in which he, his parents or legal guardian are domiciled, and the duty and authority of local boards of education concerning the enrollment of students who are and are not domiciled in their school systems, see opinion of Attorney General to Mr. C. Wade Mobley, Superintendent, Rowan County Schools, 55 N.C.A.G. 61 (1985).

Sec. 3. School attendance.

Legal Periodicals. —
For note, "Delconte v. State: Some Thoughts on Home Education," see 64 N.C.L. Rev. 1302 (1986).

CASE NOTES

"Educated by other means". — The North Carolina Constitution requires the General Assembly to permit children of this State to be "educated by other means" than in the public schools. Delconte v. State, 313 N.C. 384, 329 S.E.2d 636 (1985).

Sec. 5. Powers and duties of Board.

Legal Periodicals. —
For article, "The Pearl in the Oyster: The Public Trust Doctrine in North Carolina," see 12 Campbell L. Rev. 23 (1989).

CASE NOTES

State Board of Education does not have the power to credential speech pathologists pursuant to their regulatory authority over the qualifications of school employees; the Licensure Act for Speech and Language Pathologists and Audiologists (§ 90-292) alone governs the qualification of persons practicing speech pathology, no matter what the setting. North Carolina Bd. of Exmrs. for Speech & Language Pathologists & Audiologists v. North Carolina State Bd. of Educ., 122 N.C. App. 15, 468 S.E.2d 826 (1996).

OPINIONS OF ATTORNEY GENERAL

Establishing Certified Employees' Salaries and Amount of Work. — N.C. Const., Art. IX, § 5 and §§ 115C-12(9), 115C-272(a), 115C-284(c), 115C-296 and 115C-315(d) give the State Board of Education the authority to establish salary schedules for all certified employees and to establish the amount of work required to earn those salaries. See opinion of Attorney General to Mr. James O. Barber, Controller, State Board of Education, 55 N.C.A.G. 1 (1985).

Sec. 6. State school fund.

CASE NOTES

Quoted in Rowan County Bd. of Educ. v. United States Gypsum Co., 87 N.C. App. 106, 359 S.E.2d 814 (1987); Rowan County Bd. of Educ. v. United States Gypsum Co., 332 N.C. 1, 418 S.E.2d 648 (1992).

Sec. 7. County school fund.

Cross References. — As to allocation of revenues to local school administrative units, and definition of "clear proceeds," as referred to in this section, see § 115C-437.

Legal Periodicals. — For article, "Fines, Penalties, and Forfeitures: An Historical and Comparative Analysis," see 65 N.C.L. Rev. 49 (1986).

CASE NOTES

The term "penal laws," as used in the context of this section, means laws that impose a monetary payment for their violation. The payment is punitive rather than remedial in nature and is intended to penalize the wrongdoer rather than to compensate a particular party. Mussallam v. Mussallam, 321 N.C. 504, 364 S.E.2d 364, rehearing denied, 321 N.C. 116, 367 S.E.2d 915 (1988).

Two Funds for Public Schools. — The provisions of this section relating to the clear proceeds from penalties, forfeitures and fines identify two distinct funds for the public schools. These are (1) the clear proceeds of all penalties and forfeitures in all cases, regardless of their nature, so long as they accrue to the state, and (2) the clear proceeds of all fines collected for any breach of the criminal laws. Mussallam v. Mussallam, 321 N.C. 504, 364 S.E.2d 364, rehearing denied, 321 N.C. 116, 367 S.E.2d 915 (1988).

This section establishes two funds for public schools: (1) the clear proceeds of all penalties and forfeitures in all cases, regardless of their nature, so long as they accrue to the state; and (2) the clear proceeds of all fines collected for any breach of the criminal laws. United States v. Winston-Salem/Forsyth County Bd. of Educ., 902 F.2d 267 (4th Cir. 1990).

Bond Proceeds Held Payable to Board of Education. — In custody case in which wife sought to regain custody of child who had been removed outside the country, bond set by superior court judge was to ensure husband's appearance, as the punishment for his failure to so appear would be immediate forfeiture of the bond, and since the terms of the bond specifically made its proceeds payable to the state of North Carolina should it be forfeited, such bond was penal in nature and accrued to the Board of Education. Mussallam v. Mussallam, 321 N.C. 504, 364 S.E.2d 364, rehearing denied, 321 N.C. 116, 367 S.E.2d 915 (1988).

The 1985 amendment to § 115C-437, defining "clear proceeds," could only be effective as to monies collected because of traffic violations occurring on and after July 17, 1985. Cauble v. City of Asheville, 314 N.C. 598, 336 S.E.2d 59 (1985).

Disposition of Parking Fines. — The money penalty collected by a city from a motorist who violates its ordinance prohibiting overtime parking constitutes a penalty or fine collected for the breach of a state penal law, even if the motorist has not been convicted of violating § 14-4. Cauble v. City of Asheville, 314 N.C. 598, 336 S.E.2d 59 (1985).

The "clear proceeds" of a forfeiture, etc. —

Reasonable costs of collection constitutionally may be deducted from the gross proceeds of the fines collected by a city for overtime parking. Cauble v. City of Asheville, 314 N.C. 598, 336 S.E.2d 59 (1985).

Applicable Forfeitures. — This section applies only to forfeitures that result from a breach of North Carolina penal law and not to forfeitures initiated by a federal agency because of a violation of federal law. United States v. Winston-Salem/Forsyth County Bd. of Educ., 902 F.2d 267 (4th Cir. 1990).

A forfeiture initiated by federal authorities and arising from violations of federal law is not controlled by this section. United States v. Winston-Salem/Forsyth County Bd. of Educ., 902 F.2d 267 (4th Cir. 1990).

RICO Forfeitures. — Since the Racketeer Influenced and Corrupt Organizations Act (RICO) provides that the proceeds from the sale of RICO forfeited property accrue to the State, such proceeds must therefore be paid to the public school fund pursuant to this section. State ex rel. Thornburg v. 532 "B" Street, 334 N.C. 290, 432 S.E.2d 684 (1993).

Forfeitures of § 90-112(d1) Compared. — The plain language of this section limits its application to forfeitures resulting from a "breach of the penal laws of the State" and § 90-112(d1) of the North Carolina Act refers only to forfeitures "pursuant to this section." United States v. Winston-Salem/Forsyth County Bd. of Educ., 902 F.2d 267 (4th Cir. 1990).

The test for determining permissible deductions, etc. —

In accord with the main volume. See Harrell v. Harriet & Henderson Yarns, 314 N.C. 566, 336 S.E.2d 47 (1985), decided prior to 1985 amendment to § 115C-437 defining "clear proceeds."

The costs of collection do not include the costs associated with enforcing the ordinance, but are limited to the administrative costs of collecting the funds. Cauble v. City of Asheville, 314 N.C. 598, 336 S.E.2d 59 (1985).

Use of Penal Fines. — This section provides that the fines collected for any breach of the penal laws shall be used exclusively for the benefit of the public schools. Any judgment of a trial judge which seeks to direct payment of a fine anywhere other than to the counties for the use of the public schools is unconstitutional. Florence v. Hiatt, 101 N.C. App. 539, 400 S.E.2d 118 (1991).

Federal Forfeiture Law Held Applicable. — Where city police seized cash from a drug dealer, the city police could share in the proceeds according to federal forfeiture law. Federal and state forfeiture laws did not conflict, as this section applies only to forfeitures resulting from a breach of the penal laws of North Carolina, and the cash in question was forfeited because it was used in violation of a federal law. United States v. Alston, 717 F. Supp. 378 (M.D.N.C. 1989), aff'd sub nom. United States v. Winston-Salem/Forsyth County Bd. of Educ., 902 F.2d 267 (4th Cir. 1990).

Quoted in Britt v. North Carolina State Bd. of Educ., 86 N.C. App. 282, 357 S.E.2d 432 (1987).

Cited in State ex rel. Thornburg v. Currency in Amount of $52,029.00, 324 N.C. 276, 378 S.E.2d 1 (1989).

OPINIONS OF ATTORNEY GENERAL

Confiscated Drugs. — If federal authorities confiscate drug related property and thereafter return a part of it to local authorities for law enforcement purposes, the North Carolina Constitution and laws do not require these funds to go to the local school board as forfeited property and they may be used by local law enforcement. See opinion of the Attorney General to Mr. Aubrey S. Tomlinson, Jr., Attorney for Franklin County, 57 N.C.A.G. 51 (1988).

Counties do not have a sound legal basis for contesting the action of the United States Attorney in confiscating drug related property where all aspects of the investigation, search, arrest and seizure are handled by State law enforcement officials and all criminal charges are in State court. Where federal agents participate in the investigation, arrest or seizure the county has no legal standing. See opinion of the Attorney General to Mr. Aubrey S. Tomlinson, Jr., Attorney for Franklin County, 57 N.C.A.G. 51 (1988).

Sec. 8. Higher education.

OPINIONS OF ATTORNEY GENERAL

TACIT Program Upheld. — The TACIT Program, offered by North Carolina State University's Department of Urban Affairs to units of local government to educate employees with respect to selecting appropriate computer equipment, does not violate the provisions of § 66-58. See opinion of Attorney General to Mr. George E. Tatum, Register of Deeds, Cumberland County, 55 N.C.A.G. 101 (1986).

Sec. 9. Benefits of public institutions of higher education.

CASE NOTES

Quoted in Gwathmey v. State ex rel. Dep't of Env't, Health & Natural Resources, 342 N.C. 287, 464 S.E.2d 674 (1995).

OPINIONS OF ATTORNEY GENERAL

Local School Administrative Unit Levying Taxes at Local Level. — The legislature may by statute, consistently with the Constitution, provide that a local school administrative unit may levy taxes at the local level but such taxing authority must be conferred either by a general law, applicable statewide, or by local act subject to a vote of those persons affected. See opinion of Attorney General to Mr. John B. Dunn, Superintendent, Edenton-Chowan Schools, 60 N.C.A.G. 17 (April 24, 1990).

TACIT Program Upheld. — The TACIT Program, offered by North Carolina State University's Department of Urban Affairs to units of local government to educate employees with respect to selecting appropriate computer equipment, does not violate the provisions of § 66-58. See opinion of Attorney General to Mr. George E. Tatum, Register of Deeds, Cumberland County, 55 N.C.A.G. 101 (1986).

ARTICLE X

HOMESTEADS AND EXEMPTIONS

Section 1. Personal property exemptions.

CASE NOTES

Section 1C-1601(c) and Section 1C-1603(e)(2) are Unconstitutional. — Section 1C-1601(c) and section 1C-1603(e)(2), as they attempt to limit the claiming of constitutional exemptions to 20 days after notice to designate is served, are unconstitutional. HFC v. Ellis, 107 N.C. App. 262, 419 S.E.2d 592 (1992), cert. granted, 333 N.C. 167, 424 S.E.2d 909 (1992).

Neither this section nor § 1C-1601(a) confers any property exemptions on past residents of this State. Indeed, the constitutional and statutory provisions both contemplate the possibility that changes in the debtor's residency or other changing circumstances may warrant subsequent modification of the debtor's right to constitutional or statutory exemptions. First Union Nat'l Bank v. Rolfe, 90 N.C. App. 85, 367 S.E.2d 367 (1988).

Residency. — Irrespective of defendant's resident status previously, the trial court correctly determined defendant's residency based upon the evidence at the 1987 hearing. First Union Nat'l Bank v. Rolfe, 90 N.C. App. 85, 367 S.E.2d 367 (1988).

Where the only evidence support-

ing defendant's contention of residency was her statement that she "hoped" to return to this state as soon as her sister's estate in Ireland was settled, this general declaration did not of itself defeat the trial court's findings of nonresidency, in light of the other facts of the case, especially the undisputed evidence that defendant had moved to Ireland (her place of citizenship) at least one year previously, had no dwelling in this state, and offered no definite plan to return. First Union Nat'l Bank v. Rolfe, 90 N.C. App. 85, 367 S.E.2d 367 (1988).

Cited in In re Mims, 49 Bankr. 283 (Bankr. E.D. N.C. 1985); First Union Nat'l Bank v. Rolfe, 83 N.C. App. 625, 351 S.E.2d 117 (1986).

Sec. 2. Homestead exemptions.

CASE NOTES

I. Homestead Exemption Generally.

I. HOMESTEAD EXEMPTION GENERALLY.

Ownership Interest Required. — Under North Carolina law, an individual must have an ownership interest in residential property in order to claim a homestead exemption in the property. Hollar v. United States, 184 Bankr. 25 (Bankr. M.D.N.C.), aff'd, 188 Bankr. 539 (M.D.N.C. 1995).

Cited in In re Mims, 49 Bankr. 283 (Bankr. E.D.N.C. 1985).

Sec. 3. Mechanics' and laborers' liens.

Legal Periodicals. — For article on "North Carolina Construction Law Survey II," see 22 Wake Forest L. Rev. 481 (1987).

Sec. 4. Property of married women secured to them.

CASE NOTES

Purpose to Give Wives Same Rights as Husbands. — The historical context of this Article makes clear that wives were simply accorded rights in their property similar to those rights husbands already enjoyed in their own property. Armstrong v. Armstrong, 85 N.C. App. 93, 354 S.E.2d 350 (1987), rev'd on other grounds, 322 N.C. 396, 368 S.E.2d 595 (1988).

Section Subject to Limitation Prescribed by General Assembly. — Whatever the remedial purpose of this section, it is by its own terms subject to limitations prescribed by the General Assembly, including any statutory classification and distribution of property under the Equitable Distribution Act. Under § 50-20(b) of that Act, military retirement pay is treated no differently, whether its recipient is male or female. Armstrong v. Armstrong, 85 N.C. App. 93, 354 S.E.2d 350 (1987), rev'd on other grounds, 322 N.C. 396, 368 S.E.2d 595 (1988).

Stated in White v. White, 312 N.C. 770, 324 S.E.2d 829 (1985).

Cited in Armstrong v. Armstrong, 322 N.C. 396, 368 S.E.2d 595 (1988); Dunn v. Pate, 334 N.C. 115, 431 S.E.2d 178 (1993).

OPINIONS OF ATTORNEY GENERAL

The requirement that an equitable distribution of property must follow a decree of absolute divorce is statutory and not constitutional. See Opinion of Attorney General to The Honorable Henson P. Barnes, North Carolina Senate, 57 N.C.A.G. 30 (1987).

Sec. 5. Insurance.

CASE NOTES

Treatment of Insurance Proceeds When Received by Beneficiary. — Upon filing a bankruptcy petition, a debtor can claim as exempt the value of life insurance policy. There is no provision, however, that extends the protection of the life insurance exemption to the beneficiary of the policy once the proceeds are in the beneficiary's hands. The proceeds are treated like any other asset of the beneficiary and are available to his creditors, except to the extent that an exemption or other protection is available to the beneficiary in his own right under applicable law. The result is no different where the beneficiary is the codebtor of the insured in a joint bankruptcy case. Butler v. Sharik, 41 Bankr. 388 (Bankr. E.D.N.C. 1984).

Cited in In re Ragan, 64 Bankr. 384 (Bankr. E.D.N.C. 1986); HFC v. Ellis, 107 N.C. App. 262, 419 S.E.2d 592 (1992), cert. granted, 333 N.C. 167, 424 S.E.2d 909 (1992).

ARTICLE XI

PUNISHMENTS, CORRECTIONS, AND CHARITIES

Section 1. (Effective until certification of approval) Punishments.

CASE NOTES

Fines as Constitutional Punishment. — Fines are a pecuniary punishment extracted by the State. They are a permitted form of punishment under the state constitution. Florence v. Hiatt, 101 N.C. App. 539, 400 S.E.2d 118 (1991).

Quoted in Henry v. Edmisten, 315 N.C. 474, 340 S.E.2d 720 (1986).

Section 1. (Effective upon certification of approval) Punishments.

The following punishments only shall be known to the laws of this State: death, imprisonment, fines, suspension of a jail or prison term with or without conditions, restitution, community service, restraints on liberty, work programs, removal from office, and disqualification to hold and enjoy any office of honor, trust, or profit under this State. (1995, c. 429, s. 2.)

For this section as in effect until certification of approval, see the main volume.

Editor's Note. — Session Laws 1995, c. 429, s. 3, provides that the constitutional amendment set out in section 2 of the act, be submitted to the qualified voters of the State at the general election in November 1996. Section 3 further provides that ballots or voting systems may be used and sets out the form of ballot.

Session Laws 1995, c. 429, s. 4, provides that if a majority of the votes cast on the question are in favor of the amendment, the State Board of Elections shall certify the amendment to the Secretary of State, and it shall be effective upon this certification.

Sec. 2. Death punishment.

Legal Periodicals. — For symposium address on the death penalty in North Carolina, see 8 Campbell L. Rev. 1 (1985).

For article, "Prosecutorial Abuse of Peremptory Challenges in Death Penalty Litigation: Some Constitutional and Ethical Considerations," see 8 Campbell L. Rev. 71 (1985).

For note, "Arbitrariness and the Death Penalty in an International Context", see 45 Duke L.J. 611 (1995).

Sec. 3. Charitable and correctional institutions and agencies.

CASE NOTES

Obligation of County to Pay for Health Care of Indigent Sick. — A county does not have an obligation, under this section and N.C. Const., Art. XI, § 4, to pay for hospital care for its indigent residents. In the absence of a delegation by the State to the counties of the obligation to pay the costs of medical care of the indigent sick, such obligation is that of the State. Craven County Hosp. Corp. v. Lenoir County, 75 N.C. App. 453, 331 S.E.2d 690, cert. denied, 314 N.C. 663, 336 S.E.2d 620 (1985).

Sec. 4. Welfare policy; board of public welfare.

Legal Periodicals. — For article, "The Obligation of North Carolina Municipalities and Hospital Authorities to Provide Uncompensated Hospital Care to the Medically Indigent," see 20 Wake Forest L. Rev. 317 (1984).

CASE NOTES

Obligation of County to Pay for Health Care of Indigent Sick. — A county does not have an obligation, under N.C. Const., Art. XI, § 3 and this section, to pay for hospital care to its indigent residents. In the absence of a delegation by the State to the counties of the obligation to pay the costs of medical care of the indigent sick, such obligation is that of the State. Craven County Hosp. Corp. v. Lenoir County, 75 N.C. App. 453, 331 S.E.2d 690, cert. denied, 314 N.C. 663, 336 S.E.2d 620 (1985).

ARTICLE XIV

MISCELLANEOUS

Section 1. Seat of government.

Legal Periodicals. — For article, "Out of Focus: The Fuzzy Line Between Regulatory 'Takings' and Valid Zoning-Related 'Exactions' in North Carolina and Federal Jurisprudence," see 16 Campbell L. Rev. 333 (1994).

Sec. 3. General laws defined.

Legal Periodicals. — For note, "Town of Emerald Isle v. State of North Carolina: A New Test for Distinguishing Between General Laws and Local Legislation," see 66 N.C.L. Rev. 1096 (1988).

CASE NOTES

Dual Office Holding in Local Law Prohibited. — Chapter 129 of Session Laws 1983, insofar as it provides for dual office holding in a local law, is unconstitutional. Ratcliff v. County of Buncombe, 663 F. Supp. 1003 (W.D.N.C. 1987).

The purpose of Session Laws 1983, Chapter 539 was to establish pedestrian beach access facilities for general public use in the vicinity of Bogue Inlet, and it was a general law, not a local act. Town of Emerald Isle ex rel. Smith v. State, 320 N.C. 640, 360 S.E.2d 756 (1987).

Applied in In re City of Durham Annexation Ordinance Numbered 5991 for Area A, 69 N.C. App. 77, 316 S.E.2d 649 (1984); Floyd v. Lumberton City Bd. of Educ., 71 N.C. App. 670, 324 S.E.2d 18 (1984).

Cited in Town of Emerald Isle v. State, 78 N.C. App. 736, 338 S.E.2d 581 (1986); Piedmont Ford Truck Sales, Inc. v. City of Greensboro, 90 N.C. App. 692, 370 S.E.2d 262 (1988); Clark v. Craven Regional Medical Auth., 326 N.C. 15, 387 S.E.2d 168 (1990).

Sec. 5. Conservation of natural resources.

Cross References. — As to the Coastal Reserve Program, see § 113A-129.2.

Legal Periodicals. — For article, "The Pearl in the Oyster: The Public Trust Doctrine in North Carolina," see 12 Campbell L. Rev. 23 (1989).

CASE NOTES

Stated in State ex rel. Rohrer v. Credle, 322 N.C. 522, 369 S.E.2d 825 (1988).

OPINIONS OF ATTORNEY GENERAL

Three-Fifths Vote Not Necessary for Flowage Easement. — Dedication of Umstead State Park to the State Nature and Historic Preserve as authorized by this section does not require a vote of three-fifths of the members of each House of the General Assembly before a flowage easement may be granted to Wake County for flood control purposes. See opinion of Attorney General to Mr. Charles L. Holliday, State Building Division, 55 N.C.A.G. 105 (1986).

Constitution of the United States

AMENDMENTS

Amendment XXVII.

No law, varying the compensation for the services of the Senators and Representatives, shall take effect, until an election of Representatives shall have intervened.

Editor's Note. — Amendment XXVII was certified by the Administrator of General Services on May 18, 1992, to have been ratified by three-fourths of the whole number of states and to have become valid as a part of the Constitution of the United States.

STATE OF NORTH CAROLINA

DEPARTMENT OF JUSTICE

Raleigh, North Carolina

November 1, 1996

I, Michael F. Easley, Attorney General of North Carolina, do hereby certify that the foregoing 1996 Cumulative Supplement to the General Statutes of North Carolina was prepared and published by Michie under the supervision of the Department of Justice of the State of North Carolina.

MICHAEL F. EASLEY
Attorney General of North Carolina

TABLE OF LAWS CODIFIED SUBSEQUENT TO 1919

This table indicates the original codification of Session Laws in the General Statutes of North Carolina. This table does not reflect the repeal or renumbering of sections of the General Statutes since the original codification of a particular Session Law or section thereof.

SESSION LAWS OF 1985 (Reg. Sess., 1986)

1985 (Reg. Sess., 1986)

Ch.	Sec.	General Statutes
861	1	118-1 L.M., 18B-100 L.M.

SESSION LAWS OF 1989

1989

Ch.	Sec.	General Statutes
772	6	105-113.105 note

SESSION LAWS OF 1991 (Reg. Sess., 1992)

1991 (Reg. Sess., 1992)

Ch.	Sec.	General Statutes
762	1, 2	128-21
763	1	153A-299.6
	2	153A-299.6 note
764	1	153A-149
765	1	53-172
	2	53-178
766	1	128-27
	2	135-5
767	1	115C-68.3 note
	2	115C-68.3
	3	115C-67
	4	115C-67 note, 115C-68.3 note
768	1	36A-59.10 to 36A-59.21
769	1	115C-81
	2	115C-378
	3	115C-382
770	1	115C-302 L.M., 115C-316 L.M.
771	1	14-410 L.M.
	2	14-413 L.M.
773	1	153A-299.6
774	1	115C-37 L.M.
775	1	153A-299.6
776	1	18B-801 L.M.
777	1	45-21.21
778	1	153A-238
	2	153A-239.1
779	1	135-101

1991 (Reg. Sess., 1992)

Ch.	Sec.	General Statutes
779	2	135-104
	3	135-105
	4	135-106
781	1	163-1 L.M.
	6	163-112 L.M., 163-122 L.M.
	8	163-33 L.M.
	9	163-227.2 L.M.
	10	163-107.1 L.M.
782	1	163-1
	2	163-209
	3	163-140
783	1	53-229
784	1	58-45-35
	2	58-45-45
	3	58-46-55
	4	58-45-5
	5	58-45-30
	6	58-46-20
	7	58-45-85
	8	58-45-5 note, 58-45-30 note, 58-45-35 note, 58-45-45 note, 58-45-85 note, 58-46-20 note, 58-46-55 note
785	1	120-150
	2	120-151
	3	120-154
	4	143-318.14A

1991 (Reg. Sess., 1992)		
Ch.	**Sec.**	**General Statutes**
786	1	143-214.2 note, 143-215.1A note
	2	143-214.2
	3	143-215.1A
787	1	90-2
788	1	113-184
	2	113-202
789	1	58-84-1 L.M., 58-84-35 L.M.
790	1	153A-15
791	1	58-84-1 L.M., 58-84-25 L.M., 58-84-30 L.M., 58-84-35 L.M.
792	1	58-84-1 L.M., 58-84-30 L.M.
793	1	158-7.1
798	1, 2	58-84-1 L.M.
	10	58-84-1 L.M.
799	1	158-7.1
800	1	58-84-1 L.M., 58-84-30 L.M., 58-84-35 L.M.
801	1	160A-176.2
802	1	58-48-10
	2	58-48-20
	3	58-48-25
	4	58-48-35
	5	58-48-55
	6	58-48-105
	7	58-48-110
	8	58-48-115
	9	58-48-120
	10	58-48-125
	11	58-48-130
	12	97-105 to 97-122 Repealed
803	1	117-3.1
804	1	14-277.3
807	2, 3	160A-29 L.M.
808	2	160A-360 L.M.
810	1	115C-1 L.M., 163-1 L.M.
811	1	7A-304
	2	7A-305
	3	7A-306
	4, 5	7A-307
	6	130A-328
	7	58-6-25 note
	8	62-302 note
812	6(a)	58-6-25 note, 115C-21 note, 143-16.3 note, 143-23 note
	(b)	143-16.3
	(c)	143-23
	(e)	58-6-25
	(g)	115C-21
	7(a)	143-15.2
	(b)	143-15.3
812	7(c)	143-15.2 note, 143-15.3 note
	9(a)	105-248.1
	12	164-35 note
813	1	20-359.1
	2	20-358
	3	20-361
814	1	105-164.14
815	1	58-54-1
	2	58-54-25
	3	58-54-10
	4	58-54-20
816	1	164-35 note
	2	164-37
	3	164-38
	4	164-43
	5	164-42
	6	164-37 note, 164-38 note, 164-42 note, 164-43 note
817	1	143-215.94B
	2	143-215.94E
	3	143-215.94O
	4	143-215.94O note
818	1	20-141
	2	136-30
819	1	85B-1
	2	85B-2
	3	85B-3
	4	85B-4
	5	85B-4.1
	6	85B-4.2
	7	85B-4.3
	8	85B-4.4
	9	85B-4.5
	10	85B-4.6
	11	85B-4.7
	12	85B-4.8
	13	85B-4.9
	14	85B-4.10
	15	85B-4.11
	16	85B-4.12
	17	85B-5
	18	85B-6
	19	85B-7
	20	85B-7.1
	21	85B-8
	22	85B-9
	23	20-286
820	1	132-1 L.M.
821	1	132-1 L.M.
822	1	20-97 L.M.
824	1	153A-205 L.M.
825	1	160A-216 L.M.
826	1	130A-315
828	1, 2	143-128 L.M., 143-129 L.M., 143-131 L.M., 143-132 L.M.
829	1	54B-4

1991 (Reg. Sess., 1992)

Ch.	Sec.	General Statutes
829	2	54B-25
	3	54B-33
	4	54C-4
	5	54C-9
	6	54C-26
	7	54C-30
	8	54C-33
	9	54C-63
	10	54C-78
	11	54C-170
	12	54C-179
830	1	128-21 L.M.
832	1	153A-157
833	1	58-86-1 note, 143A-27.1 note
	2	58-86-5
	3	58-86-30
	4	58-86-40
	5	143-166.2
834	1	160A-63 L.M.
835	1	115C-302 L.M., 115C-316 L.M.
836	1	160A-312
	2	153A-275
837	1	58-35-40
	2	58-8-35
	3	58-33-125
	4	58-51-80 note, 58-51-110 note, 58-65-60 note, 58-67-85 note
	5	58-7-32
	6	58-58-135
	7	58-7-95
	8	58-67-35
	9	20-279.21
	10	20-279.5 note, 20-279.15 note
	11	58-36-75
838	1	20-97 L.M.
839	1	113A-103
	2	113A-124
	3	113A-126
	4	113A-103
	5	113A-126 note
840	1	87-1
	2	87-14
841	1	162-58 to 162-61
	2	14-255
842	1	7A-608
844	1	153A-274 L.M.
846	1	153A-343 L.M.
847	1	58-72-15 L.M.
848	1	153A-157
	2, 3	115C-518 L.M., 160A-274 L.M.
849	1-2.2	153A-238, 153A-239.1
853	1	115C-518 L.M.
857	1	105-130.5
858	1	90-400 to 90-402
859	1	136-41.1 L.M.

1991 (Reg. Sess., 1992)

Ch.	Sec.	General Statutes
859	1	160A-360 L.M.
860	1	136-30 note
863	1	18B-700 L.M.
864	1	153A-274 L.M.
865	1	153A-157
866	1	163-128 L.M.
867	1	105-187.18
868	1	106-706
869	1	115C-1 note, 115C-271 note, 115C-284 note
871	3	105-322 L.M.
873	1	7A-4.20
	2	135-57
875	1	143-128 L.M., 143-129 L.M., 143-131 L.M., 143-132 L.M.
877	1	47-54.1
879	1, 2	116-233
	3	116-233 note
	4	90-171.71
	5	126-5
	6	90-171.60
880	2	116-11
	3	115C-12
	4	115D-5
	5	115C-12 note, 116-11 note
	6	115C-12 note, 115D-5 note, 116-11 note
882	1	132-1 L.M.
884	1, 2	160A-360 L.M.
888	1	159B-2
	2	159B-11
	3	159B-12
	4	159B-17
	5	159B-18
	6	159B-18 note
	7	159B-30.1
889	1, 2	143-213
	3	143-215.107
	4	119-26.1
	5	119-26.1 note, 143-215.107 note, 143-215.112 note
890	1	104G-6
	2	113-29
	3	113-60.22
	4	113-61
	5	113-138
	6	113-151.1
	7	113-228
	8	113A-126
	9	130A-12
	10	130A-294.1
	11	130A-310.23
	12	130B-8
	13	139-47
	14	143-214.5

	1991 (Reg. Sess., 1992)	
Ch.	**Sec.**	**General Statutes**
890	15	143-215
	16	143-215.3
	17	143-215.94D
	18	143-215.114A
	19	143-358
	20	143B-139.6
	21	143B-301.1
891	1	160A-36 L.M.
892	1	106-700, 106-701
893	1	143-135.26
	2	143-135.25
	3	143-135.7
894	1	95-143
	2	97-81
	3	97-92
	4	58-36-16
	5	58-2-230
	6	130A-385
895	1	143-138
	2	143-136
896	1	153A-149
	2	160A-209
897	1	58-84-1 L.M.
898	1	115C-518 L.M., 160A-274 L.M.
899	1	113A-11
900	7	143-23 note
	8	143-16.1
	9(a)	143-23
	(b)	143-23 note
	11	143-15.3
	13(a)	146-1 note
	(b)	143B-452 note, 143B-469 note
	(c)	143B-452 note, 143B-469 note
	14(a)	143B-426.21
	(c)	136-28.1 note
	(d)	143B-426.21 note
	(e)	143B-426.21 note
	(f)	120-123
	(g)	143B-426.40
	(h)	120-123 note, 143B-426.21 note, 143B-426.40 note
	15	14-27.8 note
	16	120-30.11
	20(a)	105-113.113 note
	(b)	105-113.105 note
	(c)	105-113.113
	(d)	105-113.111
	24	143-64.05
	26	146-29.1 note
	27	131E-212
	28	143-16.3 note
	32(a), (b)	147-11
	35	120-3
	36, 37	120-37
	40	7A-101

	1991 (Reg. Sess., 1992)	
Ch.	**Sec.**	**General Statutes**
900	41	7A-171.1
	42	7A-102
	43	7A-171.1
	49(d)	7A-102 note, 20-187.3 note, 115C-12 note, 126-7 note
	51	120-3.1
	52(a)-(d)	135-5
	(e)-(g)	128-27
	53(a)	128-27
	(b)	135-5
	(c)	135-65
	(d)	120-4.22A
	54(a)	143-166.83
	(b)	143-166.84
	(c)	143-166.85
	58(b)	115C-238.13
	63(c)	115C-417
	69	115C-1 note
	75.1(a)	115C-238.1
	(b)	115C-238.3
	(c)	115C-238.4
	(d)	115C-238.6
	(e)	115C-12
	(f)	115C-47
	(g)	115C-12 note, 115C-47 note
	(h)	115C-81
	(i)	115C-238.13
	(j)	115C-363 to 115C-363.11 Repealed
	(k)	115C-363.28 Repealed
	76(a)	115C-238.7
	77(a)	115C-240
	(b)	115C-438
	78	115C-264
	79(a)	115C-524
	81(a)	115C-96
	(b)	143-11
	(c)	115C-238.5
	82	115D-20 note
	84(a), (b)	115D-5 note
	87	96-5 note
	89	115D-2 note
	94	93B-1 note, 136-28.1 note, 143-52 note, 143-53 note, 143-58 note, 143-128 note, 143-129 note
	98	143-16.3 note
	99	136-44.7
	103	136-44.5 note
	108(a)	63A-2
	(b)-(e)	63A-3
	(f), (g)	63A-6
	(h)	63A-18

1991 (Reg. Sess., 1992)

Ch.	Sec.	General Statutes
900	114	7A-37.1 note, 7A-494 note
	116(a)	7A-455
	(b)	7A-458
	118(a)	7A-148
	(b)	7A-146
	(c)	7A-180
	(d)	7A-273
	119	7A-102
	120(a), (b)	7A-60
	128	108A-68
	129	90-85.27 note, 90-85.28 note, 90-85.29 note, 90-85.30 note, 90-85.31 note
	134	143-23 note
	137(a), (b)	131E-185
	(c)	131E-186
	138	108A-55 note
	147(b)	143B-150.5 note
	148	131E-135 note
	149	150B-21.1
	150	143-548
	153	105-130.40 note, 105-151.17 note
	155	143B-472.35 note
	158	143B-471 note
	159(a)	130B-1 note
	162	143-215.3A note
	163	130A-248 note
	165(a)	130A-33.43 note
	166	130A-33.43, 130A-33.44
	169(a)	143-577
	(b)	143-573
	175	106-22.2
	176(b)	105-113.81A
	177	143-1 note
	178(a)	143-15 note
	179	143-15 note
901	1	90-210.30 to 90-210.37 Repealed
	2	90-210.60 to 90-210.72
	3	90-210.18
	4	90-210.22
	5(a), (b)	90-210.30 note, 90-210.60 note
902	1	148-70 note
	2	148-70
	3	66-58
	4	148-2
	5	148-18
	6	148-33.1
904	1, 2	110-86
	3, 4	110-86 note
905	1	20-118
907	1	143-260.10E
	2	136-44.2
	3	136-44.12

1991 (Reg. Sess., 1992)

Ch.	Sec.	General Statutes
910	1	50-21
912	1	143B-379 to 143B-384 Repealed
913	1	105-430
	2	105-446.1
	3	105-442 Repealed
	4-6	105-445
	7	105-449.26
	8	105-449.37
	9	105-449.42A
	10	105-449.49
	11	105-449.52
	12	119-18
	13	105-449.2
	14	105-130.27
	15	105-151.6
914	1	105-164.28
	2	105-236
915	1	132-1 L.M.
916	1	20-37.13
917	1	105-164.14
919	1	126-19 note
	2-4	126-19
920	1	18B-101
	2	18B-404
	3	18B-804
	4	18B-805
	5	18B-902
	6	18B-903
	7	18B-1001
	8	18B-1007
	9	18B-1104
	10	18B-101
	11	18B-603
	12	18B-1006
	13	18B-603
921	1	105-130.11
922	1	105-2.1
	2	105-33.1
	3	105-114
	4	105-130.2
	5	105-131
	6	105-134.1
	7	105-163.1
	8	105-163.38
	9	105-212
	10	105-249.2
923	1	7A-542
	2	7A-543
	3	7A-544
	4	7A-548
	5	114-15.3
924	1	95-136.1
925	1	160A-314 L.M.
926	1	105-278.4
927	1	163-132.1A, 163-132.2, 163-132.3, 163-132.5A Repealed, 163-132.5C to 163-132.5F,

1991 (Reg. Sess., 1992)

Ch.	Sec.	General Statutes
927	1	163-132.6 Repealed
	2	163-192
	3	163-132.1A note
	4	163-195
	5	163-132.1A note, 163-132.3 note
928	1	131D-3
	2	131D-4
929	1	128-27
930	1	105-152
	2	105-154
	3	105-155
	4	105-157
	5	105-252
	6	105-254
	7	105-160.6
	8	105-160.7
	9	105-163.10
	10	105-197
	11	105-263
	12	105-152.1 Repealed
	13	105-228.90
	14	105-130.19
	15	105-134.2
	16	105-151.2
	17	105-151.7
	18	105-151.8
	19	105-151.9
	20	105-151.10
	21	105-151.12
	22	105-151.13
	23	105-266
931	1, 2	105-164.13
932	1, 2	130A-309.10
	3	153A-277
	4	153A-421
933	1	163-302
935	1	105-164.13
	2	99B-10
936	1	153A-238
	2	153A-239.1
937	1	40A-5 L.M.
	2	40A-42 L.M.
938	1	158-7.1
940	1	105-164.13
941	1	7A-289.32
942	1	115C-325
943	1	20-183.7
	2	58-87-5
	3	58-88-30
	5	58-87-5 note
944	1, 2	130A-333
	3	130A-334
	4	130A-335
	5	130A-336
	6	130A-337
	7	130A-341
	8	130A-342
	9	130A-343
	10	130A-39

1991 (Reg. Sess., 1992)

Ch.	Sec.	General Statutes
944	11	130A-22
	12	143-215.1
	13	153A-274
	14	160A-311
945	1	113A-2
	2	113A-4
	3	113A-9
	4	113A-10
	5	113A-12, 113A-13
	6	113A-2 note, 113A-4 note, 113A-9 note, 113A-10 note, 113A-12 note, 113A-13 note, 150B-21.1 note
	7(a)	113A-12, 113A-13
	(b)	113A-11
946	1	136-129
947	1	20-88
948	1	153A-421
	2	153A-430
949	1	105-164.13
	2	105-164.38
	3	105-164.3
950	1.1	105-163.15
	1	159-30 L.M.
952	1	160A-301 L.M.
953	1	74D-2
	2	74D-3
	3	74D-4
	4	74D-5.1
	5	74D-6
	6	74D-7
	7	74D-8
	8	74D-9
	9	74D-10
	10	74D-11
954	1	162A-68
955	1	105-65.1
	2	105-85
	3	105-113.4A
	4	105-113.12
	5	105-113.13
	6	105-113.14, 105-113.15 Repealed
	7	105-113.16
	8	105-113.17
	9	105-113.24
	10	105-113.35
	11	105-113.36
	12	105-113.37
	13	105-113.44
	14	105-113.45
	15	105-113.46
	16	105-113.51
	17	105-74
	18	105-85
958	1	58-84-1 L.M.
959	1	20-79.5
	2	20-79.7
	3	54-109.10

1991 (Reg. Sess., 1992)

Ch.	Sec.	General Statutes
959	4, 4.1	54-109.11
	5, 5.1	54B-4
	6	54B-53
	7	54B-237
	8	54B-238
	9	54B-239
	10	54B-240
	11	54B-241
	12	54B-242
	13	54B-245
	14	54B-246
	15	54B-247
	16	54B-248
	17	54B-249
	18	62-102
	19	65-49
	20	105-130.40
	21	105-151.17
	22	105-228.24A
	23	113-315.25 note
	24	113-315.26
	25	113-315.34
	26	113A-105
	27	113B-3
	28	113B-11
	29	114-4.2D
	30	121-4
	31	122E-4
	32	130A-309.14
	33	130B-6
	34	143-166.13
	35	143-169.2
	36	143A-11
	37	143B-2
	38	143B-6
	39	143B-74
	40	143B-285.12
	41	143B-390.11
	42	143B-417
	43	143B-426.22
	44, 45	143B-427
	46	143B-428
	47	143B-429
	48	143B-430
	49	143B-431
	50	143B-431.1
	51	143B-432
	52	143B-433
	53	143B-433.1
	54	143B-434.1
	55	143B-435
	56	143B-436
	57	143B-437
	58	143B-437.1
	59	143B-437.2
	60	143B-437A
	61	143B-438.4
	62	143B-438.6
	63	143B-439
	64	143B-443

1991 (Reg. Sess., 1992)

Ch.	Sec.	General Statutes
959	65	143B-448
	66	143B-449
	67	143B-450
	68	143B-450.1
	69	143B-451
	70	143B-452
	71	143B-472.32
	72	143B-472.35
	73	143B-475
	74	147-45
	75	147-69.1
	76	150B-38
	77	159-30
	78	159C-4
	79	159C-7
	80	159C-8
	81	159D-4
	82	159D-7
	83	159D-8
	84	168-2
	85	106-760, 126-5, 131E-181, 143B-427 note, 143B-433.2, 143B-434, 143B-434.2, 143B-446
	86	143B-427 note
	87	143B-427 note
960	1	50-20
961	1	105-333
	2	105-329 Repealed
	3	105-330.1
	4	105-330.2
	5	105-330.4
	6	105-330.5
	7	105-330.6
	8	105-330.7
	9	105-325.1
	10	105-373
	11	20-50.3
	12	20-50.2 note, 20-50.3 note, 20-50.4 note, 20-66 note, 105-312 note, 105-329 note, 105-330 note, 105-330.1 to 105-330.8 note, 105-373 note
962	1	95-250 to 95-256
964	2	160A-33 L.M., 160A-45 L.M.
965	1	105-67 Repealed
	2	78A-37
	3	105-83
970	1	95-47.3
	2	95-47.4
	3	95-47.3A
971	1-6	115C-1 note
972	1	153A-335 L.M.
	2	153A-331 L.M.
	3	153A-335 L.M.
973	1, 2	163-80
974	1	105-41

1991 (Reg. Sess., 1992)		
Ch.	**Sec.**	**General Statutes**
975	1	105-273
	2	105-275
	3	105-282.1
976	1	18B-600
977	1	105-130.41
	2	105-151.22
	3	105-130.41 note, 105-151.22 note
979	1	136-19
980	1	40A-70
981	1	105-33
982	1	126-1 note
983	1	162-39
	2	162-39 note
984	1	111-43
	2	111-47
	3	111-48 to 111-52
985	1	143-132
	2	143-132 note
987	1	159-64 note
988	1	50B-9
989	1	113-270.4
990	1	143B-282
	3	143-214.6 note, 143-355 note
	4	120-70.43
	5	143B-279.5
	6	130A-294 note, 143-215.1 note, 143-215.108 note
	7	130A-309.12
	8	130A-295.02 note
991	1	95-25.5
992	1	143-129 L.M.
993	1	105-164.44C
	2	105-275.1
	3	105-277A
	4	105-277.1A
	5	105-213.1
	6	105-213
	7	105-275.1
	8	105-277A
	11	143-15.1
	12	143-15.2
	13	143-15.3
	14	143-15.4
994	1	143-580 to 143-584
	2	126-4
	3	143-589
995	1	115C-302 L.M., 115C-316 L.M.
996	1	153A-133 L.M.
	2	160A-443 L.M.
997	1	58-36-75
998	1	143B-399
999	1	115C-238.22 to 115C-238.25
1000	1	15A-1343
	2	15A-1374
1001	1	153A-157

1991 (Reg. Sess., 1992)		
Ch.	**Sec.**	**General Statutes**
1001	2	115C-518 L.M., 160A-274 L.M.
1003	1	88A-11
	2	88A-4
1004	1	105-273
1005	1, 2	17E-3
1006	1	158-7.1 L.M.
1007	1	105-102.6
	2	105-116
	3	105-134.6
	4	105-164.11
	5	105-188
	6	105-203
	7	105-213
	8	105-228.5A
	9	105-228.24
	10	105-236
	11	105-237.1
	12, 13	105-242
	14	105-251.1 Repealed
	15	105-253
	16	105-256
	17	105-269.3
	18, 19	105-277A
	20	105-288
	21	105-295
	22	105-322
	23	105-349
	24	18B-1114.1
	26	153A-293 note
	27	20-7
	28	20-14
	29	20-30
	30	20-37.6
	31	20-37.6A
	32	20-63
	33	20-81.12
	34	20-127
	35	65-64
	36	75-81
	37	120-123
	38	130A-62
	39	143B-472.3
	40	159-30
	41	159-55
	42	159G-8
	43	159-123
	44	105-164.13
	45	153A-277
	46	160A-314
	47	162A-9
1008	1	95-126 note, 143-580 note
1009	1	66-118
	2	66-124
	3	66-124.1
	4	66-220 to 66-247
1010	1	44A-23
	2	44A-7 note, 44A-25 note

1991 (Reg. Sess., 1992)

Ch.	Sec.	General Statutes
1010	3	44A-35
1011	1	93B-5
	2	90-133
	3	90-171.21
	4	90-184
	5	90A-56
	6	93-12
1013	1	153A-136
	2	160A-319
	3	160A-325
	4	153A-294
	5	153A-299.1 to 153A-299.6 Repealed
	6	130A-309.04
	7	130A-290
	8	130A-290 note, 130A-309.04 note, 153A-136 note, 153A-294 note, 153A-299.1 note, 160A-319 note, 160A-325 note
	9	153A-136 note, 160A-325 note
1014	1	58-1-25, 58-1-30, 58-1-35, 58-1-40, 58-1-41, 58-1-45, 58-1-50
	2	58-1-15
	4	58-6-1
1015	1	20-4.01
	2	20-87
	3	20-140.5
1016	1	105-290
	2	105-288
1017	1	128-26
	2	135-4
1018	1	81A-11
1019	1	105-228.30
1020	1	95-148
	2, 3	95-137
	4	95-137 note, 95-138 note, 95-148 note
1021	1	95-240 to 95-244
	2	95-130
	3	95-25.20
	4	97-6.1 Repealed
	5	74-24.15
	6	126-86
1022	1	131E-18 L.M.
1023	1	95-28.2
1024	1	110-86
1028	1	143-212
	2	143-213
	3	143-215.5
	4	130A-334
1029	1	135-4
1030	1	1-54.1
	2	7A-450.1
	3	7A-517
	4	7A-649
1030	5	14-234
	6	14-250
	7	14-277
	8	15A-406
	9	17E-10
	10	20-7
	11	20-84
	12	20-179.2
	13	25-8-317
	14	47-41.02
	15	49-12.1
	16	63A-9
	17	66-64
	18	66-68
	19	66-224
	20	88-12.1
	21	90-87
	22	90-171.37
	23	90-394
	24	93D-6
	25	105-164.14
	26	106-516.1
	27	115C-116
	28	115C-284
	29	115C-363.23A
	30	115C-546.2
	31	116-41.18
	32	116-143.1
	33	120-123
	34	121-9
	35	127A-81
	36	131E-51
	37	131E-184
	38	133-23
	39	136-32
	40	136-32.1
	41	136-33
	42	143-318.14A
	43	143B-30
	44	143B-163
	45	143B-358 Repealed
	46	150B-1
	47	153A-77.1
	48	160A-58.28
	49.15	161-10
	51.1	128-27
	51.3	97-105 Repealed
	51.5	85B-4
	51.6	128-21
	51.8	47-100
	51.9	120-47.6
	51.10	120-47.7
	51.11	54-109.82
	51.12	110-86
	51.14	120-123, 143B-426.21, 143B-426.40
	51.15	113A-12
	51.16	47-30 note, 89C-26 note
1031	1	110-44.4
1032	1	163-67

1991 (Reg. Sess., 1992)		
Ch.	**Sec.**	**General Statutes**
1032	2	163-69.1
	3	163-72.2
	4	163-74
	5	163-59
	6	163-213.2
	7	163-288
	8	163-283
	9	163-288.2
	10	163-130
	10A	163-278.9
	10B	163-278.42
	10C	163-278.43
1034	1	20-141
	2, 3	122C-268.1
	4	122C-276.1
	5	122C-271
1036	5-7	148-4.1
1037	1	120-9
1038	13	115C-121
	14	115C-325
	15	143B-10
	16	143B-13
	17	143B-148
	18	143B-265
	19	143B-357
	20	143B-392
	21	143B-415
	22	143B-434
1039	1	90A-42
	2	97-73
	3	113A-54.2
	4	113A-119.1
	5	130A-93.1
	6	130A-125
	7	130A-248
	8	130A-291.1
	9	130A-294.1
	10	130A-326
	11	130A-328
	12	143-215.3A
	13	143-213
	14	143-215.3
	15	143-215.28A
	16	74-54.1, 143B-290
	17	143-215.106A
	18	166A-6.1
	19	130A-291.1 note, 143-215.3A note, 143B-290 note
	20.1	143-215.3
	20.2	130A-270
	21	7A-101
	22	53-96
	23	113-54
	24	115C-249
	25	116-11
	26	122A-4
	27	143B-426.37

1991 (Reg. Sess., 1992)		
Ch.	**Sec.**	**General Statutes**
1039	28	90A-42 note, 130A-93.1 note, 130A-125 note, 130A-294.1 note, 143-215.3A note
1041	1	90-108
1042	1	20-79.4
	2	20-79.7
	3	20-81.12
	4	20-81.12 note
1043	1	74E-1 to 74E-13
	2	14-401.6
	3	15A-402
	4	20-37.6
	5	74C-12
	6	160A-288
	7	160A-288.2
	8	74A-1 to 74A-6 Repealed
1044	7(a)	120-32.1
	(b)	120-32.2
	9.1(a)	7A-171.1
	9.5(a), (b)	105-275.1
	10(a)	143B-390.15, 143B-390.16
	(b)	120-123
	13	146-1 note
	14(a)	143-34.1
	(b)	115C-441.1
	(c)	115D-25.1
	(d)	116-17.1
	(e)	143-34.1
	(f)	115C-341.1
	(g)	115D-25.2
	(h)	116-17.2
	18(a)	163-72.4
	19(a)	163-81
	(b)	163-80
	(e)	163-82
	21	115C-238.14
	22(a)	115C-21
	23(a)	115C-472.5
	25(a)	115D-39
	(b), (c)	115D-39 note
	33, 34	20-79.7
	35	136-44.2
	36	63A-1 note
	38	143-341 note
	39(a)	143-300.10
	41(b)	113A-1 note, 113A-50 note, 133-1.1 note, 143-64.10 note, 143-128 note, 143-129 note, 143-131 note, 143-132 note, 143-134 note, 143-135.26 note, 143-408.1 note

1991 (Reg. Sess., 1992)

Ch.	Sec.	General Statutes
1044	43	143-16.3 note
	46	143-341 note
	48(a)	36A-59.21 Repealed
	57	143-215.74 note
	58	104G-19 note

1991 (Reg. Sess., 1992)

Ch.	Sec.	General Statutes
1044	59(a)	130A-344
	59(b)	130A-344 note
	66	113-77.9
	69	113-291.6 note

SESSION LAWS OF 1993

1993

Ch.	Sec.	General Statutes
3	1	143-135 L.M.
5	1	106-24.1
7	1	131E-175
	2	131E-176
	3	131E-177
	4	131E-178
	5	131E-181
	6	131E-183
	7	131E-184
	8	131E-185
	9	131E-188
	10	131E-189
	11	131E-190
	12	131E-175 to 131E-178 note, 131E-181 note, 131E-183 to 131E-185 note, 131E-188 to 131E-190 note
8	1	143B-289.5
9	1	58-86-5
10	1	131E-13 L.M.
11	1	143-128 L.M., 143-129 L.M., 143-131 L.M., 143-132 L.M.
12	1	105-228.90
	2	105-2.1
	3	105-33.1
	4	105-114
	5	105-130.2
	6	105-131
	7	105-134.1
	8	105-134.6
	9	105-163.1
	10	105-163.38
	11	105-212
13	1	166A-30 to 166A-32
15	2(a)	163-279 L.M.
16	1	159F-1 to 159F-9 Repealed
	2	159F-1 note
17	1	18B-801 L.M.
18	1	106-758
	2	106-761 to 106-764
	3	113-273
	4	113-274

1993

Ch.	Sec.	General Statutes
22	1	88-4
	2	88-1
23	1	120-150
25	1	158-7.1 L.M.
29	1	130A-309.25
30	1	15A-532
	2	15A-601
	3	15A-941
31	1	158-7.1
33	1	113-291.9
35	1	163-302 L.M.
36	1	152-1 L.M.
38	1	115C-238.3
	2	115C-238.6
39	1	114-10.1
40	1	58-36-1 note, 58-36-15 note, 97-1 note, 97-100 note
41	1	58-3-175
42	1	158-7.1
44	1	113-202 L.M.
45	1	105-130.40
	2	105-151.17
	3	105-130.40 note, 105-151.17 note
47	1	7A-516 note, 7A-517 note, 7A-648 note
48	1	7A-109 note, 14-402 note, 14-409.1 note
51	1	136-30
52	1	153A-176 L.M., 160A-265 L.M.
53	1	160A-360 L.M.
54	1	88-1
56	1	20-97 L.M.
57	1	115C-432
58	1	120-58
59	1	148-1 note
61	1	115C-21.1 note, 115C-106 note, 115C-117 note
62	1	153A-238
	2	153A-239 Repealed
	3	153A-239.1
	4	153A-240 Repealed
	5	153A-239 note, 153A-240 note
63	1	160A-58.1 L.M.

Ch.	Sec.	1993 General Statutes
64	1	7A-109 note, 14-402 note, 14-409.1 note
65	1	113-133.1
67	1-4	75A-17 L.M.
	5	160A-176.2
69	1	115D-62
	2	115D-2.1
71	1	20-123
72	1	163-132.1A L.M.
	2	163-128 L.M., 163-132.3 L.M., 163-132.5C L.M.
74	1	163-72.4
	2	163-80, 163-81
75	1	152-1 L.M.
76	1	153A-241 L.M.
78	1	87-21
79	1	160A-384 L.M.
80	1	47-50
82	1	132-1 L.M.
83	1	15A-743
84	1	15A-1342
	2	15A-1351
85	1	96-9
86	1	130A-294, 130A-309.09B
87	1	143-299.3 note
90	1	115C-84 L.M.
91	1-9	148-4.1
92	1	160A-279 L.M.
95	1	153A-39
98	1	115C-302
	2	115C-316
101	1(a)	153A-343 L.M.
	1(b)	153A-323 L.M.
	2(a)	160A-384 L.M.
	2(b)	160A-364 L.M.
105	1	58-7-173
	2	147-69.1
106	1	7A-109 L.M.
107	1	7A-210
109	1	143B-72
	2	143B-72 note
110	1	115C-37 L.M.
112	1, 2	87-10
114	1	115C-47
116	1, 2	20-305.1
	3	20-305.1 note
117	1	115C-105.1 to 115C-105.10
119	1, 2	47-30
	3	89C-26
120	1, 2	97-93
122	1	96-8
	2	96-12
	3	96-14
123	1	20-305
124	1	130A-440
	2	130A-441
125	2	160A-176.2

Ch.	Sec.	1993 General Statutes
126	1	36A-66.2
127	1	18B-103
128	1	115C-521 L.M., 143-128 L.M., 143-129 L.M., 143-131 L.M., 143-132 L.M.
129	1	58-26-1
130	1	159C-10
	2	159D-10
131	1	153A-330 L.M.
132	1	115C-238.30 to 115C-238.33
133	1	160A-265 L.M.
134	1	130A-153
	2	58-39-75
135	1	131E-159
137	1	160A-240.1 L.M.
	2	40A-3 L.M.
	3	160A-296 L.M.
138	1	143-135 L.M.
139	1	153A-343 L.M.
	2	153A-323 L.M.
140	1	105-449.34
141	1	14-401.13
142	1	115C-12 note
143	1	14-401
144	1	106-92.7
	2	106-92.6
	3	106-92.12
145	1	126-5
146	1	130A-26
	2	130A-92
	3	130A-93
147	1	106-22.3
148	1	87-8
149	1	160A-299
	2, 3	160A-299 note
150	1	32A-28 to 32A-34
151	1	14-401.6
152	1	147-64.12
153	1	143-129 L.M.
	2	143-129 L.M.
	3	143-128 L.M., 143-129 L.M., 143-131 L.M., 143-132 L.M.
154	1	160A-384 L.M.
155	1	58-78-1
156	1	153A-343 L.M.
	2	153A-343 L.M.
	3	153A-323 L.M.
157	1	25-4A-101 to 25-4A-108, 25-4A-201 to 25-4A-212, 25-4A-301 to 25-4A-305, 25-4A-401 to 25-4A-406, 25-4A-501 to 25-4A-507
	2	25-1-105
	3	25-4A-101 note

Ch.	Sec.	1993 General Statutes
159	2	160A-58.1 L.M.
160	1	160A-63 L.M., 160A-70 L.M.
163	1	54B-75
	2	54B-76
	3	54C-62
	4	54C-63
	5	54B-34.1, 54B-34.2
	6	54C-47
164	1	90-210.23
	2	90-210.24
	3	90-210.68
165	1	153A-136
	2	160A-317
166	1	115C-296
	2	115C-296 note
167	1	163-279 L.M., 163-291 L.M.
168	1	160A-400.9 L.M.
169	1	115C-325
	2	115C-276
170	1	143B-438.3
	2	115D-5
171	1	143-128 L.M.
172	1	95-47.22
	2	95-47.24
173	1-3	130A-290
	4	130A-291.1
	5	130A-335
174	1	158-7.1 L.M.
175	1	53-210
	2	53-211
	3	53-212
	4	53-214
	5	53-215
	6, 7	53-209
	8	53-210
	9	53-211
	10	53-212
		Repealed
	11	53-213
	12	53-215
	13	53-216
	14	53-217
	15	53-218
176	1	90-21.22
177	1	160A-388 L.M.
178	1, 2	161-22
	3	161-22.3
	4, 5	161-22
	6	161-22 note, 161-22.3 note
179	1	115C-425
180	1	115C-81
	2	115C-81.1
	3	115C-151 to 115C-156
		Repealed
		115C-157 to 115C-164
	4	115C-302
	5	131D-10.2

Ch.	Sec.	1993 General Statutes
180	6	134A-8
	7	137-35
	8	148-22.1
182	1	159B-11
183	1	136-28.6
184	1	113A-84
	2	113A-85
	3	113A-86
	4	113A-87
	5	113A-89
	6	113A-95
185	1	110-88
	2	110-90
	3	110-91
187	1	40A-3 L.M.
	2	40A-42 L.M.
188	1	1C-1800 to 1C-1808
189	1	62-50
190	1	90-9
191	1	53-219 to 53-224.8
	2	54B-265 to 54B-278
	3	54C-199 to 54C-212
193	1	18B-600
	2	18B-501
194	1	153A-335 L.M.
195	1	153A-335 L.M.
196	1	143-128 L.M.
197	1	130A-309.14
	2	136-18
	3	130A-309.14 note, 136-18 note
198	1	90-171.24
	2	90-171.25
	3	90-171.30
	4	90-171.31
	5	90-171.33
	6	90-171.34
	7	90-171.35
	8	90-171.36
	9	90-171.43
	10	90-171.44
	11	90-171.47
199	1	116-74.21
	2, 3	116-74.21 note
	4	115C-296
	5-8	116-74.21 note
200	1	20-97 L.M.
201	1	157-66, 157-67, 157-69
202	1	95-47.4
203	1	95-25.13
204	1	95-48 to 95-53 Repealed
205	1	14-404 L.M.
208	4	113-291.4
209	1	50-21
210	1-3	115C-325
	4	115C-276
	5	Repealed
	6	115C-287.1
211	1	130A-24
	2	130A-23

Ch.	Sec.	1993 General Statutes
212	1	145-16
	2	145
213	1	95-231
	2	95-232
	3	95-234
	4	95-235
214	1	95-25.7
	2	95-25.14
215	1	130A-282
216	1	106-666
	2	106-673
	3	106-657
	4	106-659
	5	106-664
	6	106-665
217	1	20-218
218	1	55-17-03
	2	55-16-22
219	1	14-309.15
	2	14-309.15 note
221	3	113-133.1
222	3	159-7 L.M.
223	1	106-185
	2	106-194.1
	3	106-190 note, 106-194.1 note
225	1	95-25.23
	2	95-25.23A
	3	95-25.23B
226	1	58-57-1
	2	58-57-5
	3	58-57-15
	4	58-57-20
	5	58-57-25
	6	58-57-35
	7	58-57-40
	8	58-57-45
	9	58-3-147, 58-57-105, 58-57-110
	10	58-57-60
	11	58-57-90
	12	24-8
	13	24-14
	14	53-189
	15	25A-17
	16	58-33-25
	17	58-57-1
227	3(b)	150B-45 L.M.
	9	132-6 L.M.,
	9	132-9 L.M.
229	1, 2	143-129 L.M.
230	1	105-278.6
231	1	115C-12 note, 115C-295 note
232	1	153A-353
	2	153A-355
	3	160A-413
	4	160A-415
	4.1	143-151.8
233	1-3	90A-53
234	1	7A-759
235	1	62-220 note
236	1	163-147
	2	163-153
237	1	69-25.1 L.M.
239	1	95-25.5
	3	95-25.5 note
240	1	160A-217 L.M.
	2	160A-216 L.M.
241	1	90-14
	2	90-2
	3	90-2 note
242	1	90-210.63
243	1, 2	18B-1004
244	1	58-84-1 L.M., 58-84-35 L.M.
245	1	130A-189
246	1(a), (b)	158-7.1
248	1	143-548
249	1	121-23
250	1, 2	130A-309.14
	3	130A-309.06
252	1	143-48
253	5.1	164-35 note
	6	7A-37.1 note, 7A-494 note
255	1	105-487
	2	105-502
	3	105-487
	4	105-502
	5	105-504
256	1	143-49
	2	143-58.2, 143-58.3
	3	136-28.8
	4	143-170.1
257	1	43-51
	2	53-134
	3	58-88-15
	4	90-171.25
	5	90-270.18
	6	90C-7
	7	105-164.41
	8	111-18
	9	111-27.1
	10	112-5 to 112-37 Repealed
	11	115C-133
	12	127A-106
	13	135-8
	14	143-247.2
	15	143-250.1
	16	143B-289.8
	17	143B-289.9
	18	148-29
	19	7A-343.1
	20	159-34
258	1	147-54.3
259	1	14-269.7
	2	14-269.1

Ch.	Sec.	1993 General Statutes
259	3	14-315
260	1	115C-468
	2	115C-471
262	1	130A-247
	2	130A-248
	3	130A-249
	4	130A-250
	5	153A-226
	6	130A-237
263	1	115C-238.2
	2	115C-238.3
	3	115C-238.4
265	1	160A-265 L.M.
266	1	130A-55 L.M.
267	1(a)	153A-343 L.M.
	1(b)	153A-323 L.M.
	2(a)	160A-384 L.M.
	2(b)	160A-364 L.M.
268	1	110-101.1
269	1	58-51-58
	2	58-65-93
	3	58-67-77
	4	58-50-155
	5	58-50-155 note, 58-51-58 note, 58-65-93 note, 58-67-77 note
270	1	115C-116
271	1	153A-343 L.M., 160A-384 L.M.
272	1	152-1 L.M.
273	1	130A-294
274	1	14-27.8
275	2	158-7.1
276	1	160A-265 L.M.
277	1	160A-279 L.M.
	2	160A-279 L.M.
	3	115C-518 L.M.
	3	160A-265 L.M.
278	1	113-315.28
281	4	143-128 L.M.
283	1	160A-411 L.M., 160A-441 L.M.
284	1	37-17
	2	37-21
	3	37-21.1
	4	37-30
	5	37-31
	6	37-33
	7	37-35
285	1	20-138.1
	2	20-12.1
	3, 4	20-16.2
	5, 6	20-16.5
	7	20-139.1
	8	20-13.2
	9	20-179
	10	20-141.4
	11	58-36-75

Ch.	Sec.	1993 General Statutes
286	1	14-33
287	1	14-402
	2	14-409.1
288	1	8-20 Repealed
	2, 3	47-31
	4	47-17.2
289	1	147-54.19
	2	147-54.19 note
290	1	130A-309.10
293	1	58-51-37
	2	58-51-37 note
294	1	22B-1
	2	22B-2
295	1	66-10
	2	66-11
296	1(a)	153A-343 L.M.
	1(b)	153A-323 L.M.
	2(a)	160A-384 L.M.
	2(b)	160A-364 L.M.
	3	153A-323 L.M., 153A-343 L.M.
	4	160A-364 L.M., 160A-384 L.M.
298	1	153A-99
	2	160A-169
299	1	28A-18-2
300	1	95-135
	2	95-137
	3	95-223
301	1	14-190.9
	2	14-190.13
303	1	90-450 to 90-459
	2	90-18
	3	90-455 note
304	1	133-9 L.M.
305	1	45-21.1
	2	45-21.3 Repealed
	3	45-21.7
	4	45-21.8
	5	45-21.9A
	6	45-21.10
	7	45-21.15
	8	45-21.16
	9	45-21.16A
	10	45-21.17
	11	45-21.17A
	12	45-21.21
	13	45-21.22
	14	45-21.23
	15	45-21.24
	16	45-21.27
	17	45-21.28 Repealed
	18	45-21.29
	19	45-21.29A
	20	45-21.30
	21	45-21.33
	22	45-21.34
	23	45-21.35
	24	45-38

Ch.	Sec.	1993 General Statutes
306	1	160A-70 L.M.
	2	163-293 L.M.
307	1	90-31.1
	2	90-34
	3	90-225.1
308	1, 2	31B-3
309	1	160A-33 L.M.
310	1	143-135 L.M.
311	1	106-549.15
	2	106-549.39
312	1, 2	160A-360 L.M.
	3	160A-58.1 L.M.
313	1	20-24.1
	2	7A-304
314	1	105-154
315	1	105-163.43
	2	105-163.16
	3	105-266
316	1	153A-233 L.M.
317	1, 2	95-136
319	1, 2	90-89
	3, 4	90-90
	5	90-91
	6	90-92
	7	90-93
	8	90-89 to 90-93 note
320	1	62-302 note
	2	58-6-25 note
	3	95-106
	4	95-105
	5	20-87, 58-36-65, 115D-72
321	9	143-16.3 note
	10	116-30.1 note, 143-27 note
	17.1(a)	143-15.2
	17.1(b)	143-15.3A
	17.1(c)	143-15.3
	17.1(d)	143-11
	21(a), (b)	14-250 note
	(c)	20-84 note
	21.1	116-30.1 note
	21.2	143-15.3
	22	143-1 note
	24(a)	138-6
	(b)	
	(c)	120-3.1
	25(a)	143-23 note
	26(a)	105-213
	(b)	105-275.1
	(c)-(f)	105-277A
	(g)	105-113.82
	(h)	105-116
	(i)	105-120
	(j)	105-277A
	(k)	105-213.1
	28(a), (b)	143B-279.3
	(c)	143B-279.2
321	28(d)	143B-390.2 to 143B-390.4 recodified as 143B-289.20 to 143B-289.22
	(e)	143B-289.20
	(f)	143B-289.22
	(g)	143B-390.10, 143B-390.11 Repealed
	(h)	143B-390.15, 143B-390.16 recodified as 143B-344.16, 143B-344.17
	33	143B-125
	39.3(a)	115C-105.4
	c (b)	115C-105.5
	c (d)	115C-105.5 note
	41	58-78-5
	45	143-6.1
	48	147-11
	52	120-3
	53, 54	120-37
	57(a)	7A-101
	57(b)	7A-101 note
	58, 59	7A-102
	60	7A-171.1
	66(d)	115C-12 note, 126-7 note
	71	120-4.12
	72(a)	115C-336
	72(b), (c)	115C-336 note
	73(a)	115C-272
	(b)	115C-285
	(c)	115C-302
	(d), (e)	115C-316
	(f)	126-8
	74(a)	120-4.22A
	(b)	128-27
	(c)-(e)	135-5
	(f)	135-65
	(g)	135-65 note
	74.1(a)	120-4.26
	(b)	120-4.26A
	(c), (d)	128-27
	(e), (f)	135-5
	74.2(a), (b)	135-5
	78(a)	143-613 note
	(a1)-(e)	143-613
	78.3(f)	143-613 note
	79(a), (b)	116-22 note
	(c)	116-143.3 note
	80(a)-(c)	116-19 note
	(d)	116-19
	(e)	116-21

		1993
Ch.	Sec.	General Statutes
321	85(a)	116-74.41 to 116-74.43
	(b)	135-40.2
	(c)	116-74.42 note
	(d)	120-123
	86	115C-12 note, 116-11 note
	89(a)	116-11 note
	(b)	116-143 note
	101.5	116-1 note
	104(b)	115D-5 note
	110	115D-31.2
	111	115D-5
	117(a)-(d)	115D-5 note
	(e)	115D-5
	119	115D-5 note
	125	115C-12
	128	115C-363.15 to 115C-363.21 Repealed
	130	143-23 note
	133(a)	115C-12
	(b)	115C-238.6
	135(a)	115C-102.5 to 115C-102.7
	(b)	120-123
	(c)	115C-102.5 note
	136(a)	115C-64.1 note
	(b)	115C-64.1, 115C-64.2 note
	(c)	115C-64.2 note
	138(a)-(j)	115C-1 note, 115C-81 note
	138.1(a)-(d)	115C-1 note, 115C-81 note
	139(a)	115C-12 note, 115C-47 note
	(b)	115C-12
	(c)	115C-47
	(d)	115C-81
	141	115C-295 note
	143.1,	115C-302 L.M.
	144	115C-316 L.M.
	144.2(a)	115C-238.1
	(b)	115C-238.3
	(c)	115C-238.6A
	(d)	115C-238.7
	144.2(e)	115C-21.1
	(f)	115C-238.7 note
	(g)	115C-238.1 note
	(h)	115C-238.3 note, 115C-238.6A note
	145(b)	126-5
	146	20-97
	147	136-44.27
	148	136-44.5 note
	153(a)	136-16.4
	162	93B-1 note, 136-28.1 note, 143-52, 143-53 note, 143-58 note, 143-128, 143-129 note
321	164(a)	105-187.9
	(b)	105-187.9 note
	169.1	136-41.2 note
	169.2(a)	120-70.50
	(b)	120-70.51
	(c)	120-70.52
	(d)	136-12
	(e)	136-184
	(f)	143-318.14A
	(g)	93B-1 note, 136-28.1 note, 136-28.4 note, 136-44.5 note, 143-10.2 note, 143-52 note, 143-128 note
	169.3(a)	20-79.7
	(b)	20-79.7 note
	169.4	20-79
	175	148-18
	178(b)	131E-99.2 recodified as 131E-98
	180(a)	143-12 note
	181(a)	166A-6
	188(a), (b)	7A-450 note
	192	7A-344
	195(a)	15A-2000 note
	199	7A-45.2
	200.1(a)	164-35 to 164-45
	(b)	164-38
	200.3	7A-52
	200.4(a)	7A-41
	(b), (c)	7A-41 note
	(e)	7A-133
	(f)	7A-133 note
	(g)	7A-41 note, 7A-133 note
	(h)	7A-171 note
	(i)	7A-289.5 note
	(j)	7A-198 note
	(l)	7A-60
	(m)	7A-60 note
	(n)	7A-60 note, 7A-133 note
	(p)	7A-41 note
	200.5(a)	7A-41
	(b)	7A-41 note
	(d)	7A-41
	(e)	7A-41 note
	(g)	7A-45.1
	(h)	7A-45.1 note
	200.6(a)	7A-133
	(b)	7A-133 note
	(d)	7A-133
	(e)	7A-133 note
	200.7(a), (b)	7A-60
	(c), (d)	7A-60 note
	(e)	7A-69

Ch.	Sec.	1993 General Statutes
321	206(b)	53-96
	208(a)-(i)	115C-106 note, 122C-147 note, 130A-5 note, 134A-1 note
	(h)	143-18 note
	219(a)-(d)	114-2.2 note
	220(a)-(c)	122C-3
	(d)	122C-143 Repealed
	(e)	122C-143.1, 122C-143.2
	(f)	122C-144 Repealed
	(g)	122C-144.1
	(h), (i)	122C-147
	(j)	122C-147.1, 122C-147.2
	(k)	122C-148 to 122C-150 Repealed
	(l)	122C-151
	(m)	122C-145 recodified as 122C-151.2
	(n)	122C-151.1 Repealed
	(o)	122C-151.3, 122C-151.4
	(p)	122C-112
	221.1	143-341 note
	222(f)	90-85.27 to 90-85.31 note
	228	108A-27 note
	230	108A-28 note
	236(a)	143B-138 note
	238.1	58-50-151
	241	143-23 note
	242	131D-2
	245	131E-76
	250	143B-139.4 note
	254(a)	120-79.1 note, 143B-168.10 to 143B-168.12
	(b)	143B-168.10 note
	(c)	110-91
	254(c1)	110-91 note, 110-106 note
	(d)	110-91 note
	255	143B-168.10 note
	257	120-70.91 note, 143B-168.10 note
	259	120-70.90 to 120-70.92
	260	146-30 note
	260.1	146-30
	261	143-215.74B
	263	143B-289.5
	267	143B-279.3 note, 143B-285.10 note
	268	130A-295, 130A-295.01 note
	269	130A-366
	272(a), (b)	20-16.5 note
	274	130A-29
	275(a), (b)	130A-124
321	276	130A-131.15
	281(a)	130A-152, 130A-433 note
	(b)	130A-433 note
	285(a)	143-571 to 143-573, 143-575 to 143-576.6, 143-578
	(b)	143-573 Repealed
	(c)	143-574 Repealed
	(d)	143-577 Repealed
	288	130A-33.50, 130A-33.51
	290(a), (b)	105-164.44B
	305(a)	122A-4 note, 143B-433.1 note
	(b)	122A-5
	(c)	143B-433.1 to 143B-433.3 Repealed
	(d)	122A-5.10 to 122A-5.12
	306(b), (d)	96-5 note
	309(a)	158-8.1
	(b)	158-8.1 note
	309.1(a)	158-8.2
	(b)	120-123
	(c)	158-8.2 note
	309.2(a)	158-8.3
	(b)	158-8.3 note
	313(a)	143B-434
	(b)	143B-433
	(c)	143B-434.3 renumbered as 143B-434.01
	(d)	143B-434 note
	(e)	143B-437C
	(f)	143B-434 note
	314.1	143B-434 note, 143B-452 note
	314.2	143b-434 note, 143B-469 note
	317	116-74.21 note
	319	143-1 note
	321	7A-41 note, 7A-45.1, 7A-45.2 note, 7A-52, 7A-60 note, 7A-69, 7A-133 note, 7A-101, 7A-102 note, 7A-171.1 note, 7A-344 note, 20-79 note, 20-79.7 note, 20-97 note, 53-96 note, 58-50-151 note, 58-78-5 note, 93B-1 note, 105-113.82 note, 105-116 note, 105-120 note, 105-164.44B note, 105-187.9 note,

Ch.	Sec.	1993 General Statutes
321	321	105-213, 105-213.1 note, 105-275.1 note, 105-277A note, 110-91 note, 115C-12 note, 115C-21.1 note, 115C-47 note, 115C-81 note, 115C-102.5 to 115C-102.8 note, 115C-105.4, 115C-105.5 note, 115C-238.1 note, 115C-238.3 note, 115C-238.6 note, 115C-238.6A note, 115C-238.7 note, 115C-272 note, 115C-285 note, 115C-302 note, 115C-316 note, 115C-336 note, 115C-363.15 to 115C-363.21 note, 115D-5 note, 115D-31.2 note, 116-19 note, 116-21 note, 116-74.41 to 116-74.43 note, 120-1 note, 120-3.1 note, 120-4.12 note 120-4.22A note, 120-4.26, 120-4.26A note, 120-37 note, 120-70.50 to 120-70.52 note, 120-70.90 to 120-70.92 note, 120-123 note, 122A-5 note, 122A-5.10 to 122A-5.12 note, 122C-3 note, 122C-112 note, 122C-143 to 122C-145 note, 122C-147 to 122C-151 note, 122C-151.2 to 122C-151.4 note, 126-5 note, 126-8 note, 128-27 note, 130A-29 note, 130A-33.50, 130A-33.51 note,
321	321	130A-124 note, 130A-131.15 note, 130A-152 note, 130A-366 note, 130A-433 note, 131D-2 note, 131E-76 note, 131E-98 note, 135-5 note, 135-40.2 note, 135-65 note, 136-12 note, 136-16.4 note, 136-44.27 note, 136-184 note, 138-6 note, 143-1 note, 143-10.2 note, 143-12 note, 143-18 note, 143-15.3A note, 143-23 note, 143-52, 143-53 note, 143-128, 143-129 note, 143-215.74B note, 143-318.14A note, 143-613 note, 143B-125 note, 143B-168.10 to 143B-168.12 note, 143B-279.2, 143B-279.3 note, 143B-289.5 note, 143B-289.20 to 143B-289.22 note, 143B-344.17 note, 143B-390.2 to 143B-390.4 note, 143B-390.10, 143B-390.11 note, 143B-390.15, 143B-390.16 note, 143B-433 to 143B-434 note, 143B-434.01 note, 146-30 note, 147-11 note, 148-18 note, 158-8.1 to 158-8.3 note, 164-35 to 164-45 note, 166A-6 note
	322	7A-41 note, 7A-45.1 note, 7A-60 note, 7A-101 note, 7A-133 note, 7A-171 note, 7A-198 note, 7A-289.5 note, 7A-450 note, 14-45.1

Ch.	Sec.	1993 General Statutes
321	322	note, 14-250 note, 15A-2000 note, 20-16.5 note, 20-79.7 note, 20-84 note, 90-85.27 to 90-85.31 note, 93B-1 note, 96-5 note, 105-187.9 note, 108A-27, 108A-28 note, 110-91 note, 110-106 note, 114-2.2 note, 115C-1 note, 115C-12 note, 115C-47 note, 115C-64.1, 115C-64.2 note, 115C-81 note, 115C-102.5 note, 115C-105.5 note, 115C-106 note, 115C-295 note, 115C-238.1 note, 115C-238.3 note, 115C-238.6A, 115C-238.7 note, 115C-336 note, 115D-5 note, 116-1 note, 116-11 note, 116-19 note, 116-22 note, 116-30.1 note, 116-74.21 note, 116-74.42 note, 116-143 note, 116-143.3 note, 122A-4 note, 122C-147 note, 122C-151.1 note, 126-7 note, 130A-5 note, 130A-152 note, 130A-295, 130A-295.01 note, 130A-433 note, 134A-1 note, 135-5 note, 135-65 note, 136-28.1 note, 136-28.4 note, 136-41.2 note, 136-44.5 note, 143-1 note, 143-10.2 note, 143-12 note, 143-16.3 note, 143-18 note, 143-23 note, 143-27 note, 143-52, 143-53 note, 143-58 note, 143-128, 143-129 note, 143-341 note, 143-613 note, 143B-139.4 note, 143B-150.5 note, 143B-168.10 note, 143B-279.3 note, 143B-285.10 note, 143B-433.1 note, 143B-434 note, 143B-452 note, 143B-469 note, 146-30 note, 158-8.1 to 158-8.3 note
322	1	113-202.1
	2	113-202.2
323	1	113-315.29
324	1	7A-517
325	1	20-97 L.M.
326	1	147-54.4
	2	147-54.4 note
327	1	115C-288
328	1	20-75.1
329	1	143-138
	2	143-139
	3	143-138
	4	160A-175
	5	153A-123
330	1	115C-363.23A
331	1	20-286
	2	20-305
	3	20-306
	4	20-305 note, 20-306 note
332	1	14-401.14
333	1	130A-101
	2	8-50.1
	3	49-14
334	1, 2	143-64.10
	3	143-64.11
	4	143-64.12
	5	143-64.13 Repealed
	6	143-64.15
	7	143-64.14 recodified as 143-64.16
	7.1	133-3
335	1	50-13.4
336	1	131E-162
	2	131E-154.2
337	1	143B-267
338	1	1-75.2
339	1	24-10.1
	2	66-106
	3	66-108
340	1	25-2-106
	2	25-2-718
342	1	160A-29 L.M., 160A-31 L.M., 160A-48 L.M., 160A-49 L.M., 160A-58.7 L.M., 160A-58.2 L.M.
343	1	96-4
	2, 3	96-14
	4, 5	96-15
	6	96-12.1 note
	7	96-18
344	1	143-215.22H
	2	143-215.3
	3	143-215.22H note
345	1	20-97 L.M.

Ch.	Sec.	1993 General Statutes
346	1	130A-248
347	1	58-50-25
	2	58-50-30
	3	58-65-1
	4	58-65-35
348	1	143-215.22G, 143-215.22I
	2	143-215.6A
	3	143B-282
	4	153A-285 Repealed
	5	153A-287 Repealed
	6	162A-7 Repealed
	7	143-215.6A note, 143-215.22I note
349	1	62-3
350	1	114-19.2
351	1	95-69.9
	2	95-69.10
	3	95-69.11
	4	95-69.16
	5	95-69.17
352	1	153A-19
	2	163-132.2
	3	163-132.3
	4	163-132.2 note
354	1	57C-1-01 to 57C-10-07
	2	55B-9
	3	59-32
	4	59-45
	5	59-84.1 to 59-84.3
	6	105-33.1
	7	105-113.4
	8	105-113.44
	9	105-113.68
	10	105-113.106
	11	105-114
	12	105-130.2
	13	105-134.1
	14	105-154
	15	105-163.1
	16	105-164.3
	17	105-164.29
	18	105-228.90
	19	105-230
	20	105-231
	21	105-232
	22	105-236
	23	105-273
	24	105-430
	25	105-433
	26	105-449.2
	27	105-449.4
	28	105-449.37
	29	55B-9 note, 57C-1-01 to 57C-10-07 note, 59-32 note, 59-45 note, 59-84.1 to 59-84.3 note, 105-33.1 note, 105-113.4 note, 105-113.44 note, 105-113.68 note, 105-113.106 note, 105-114 note, 105-130.2 note, 105-134.1 note, 105-154 note, 105-163.1 note, 105-164.3 note, 105-164.29 note, 105-228.90 note, 105-230 to 105-232 note, 105-236 note, 105-273 note, 105-430 note, 105-433 note, 105-449.2 note, 105-449.4 note, 105-449.37 note
355	1	77-50
	2	77-51
	3	77-52
	4	77-53
	5	77-54
	6	77-55
	7	77-56
	8	77-57
	9	77-58
356	1	119-61
	2	119-59
	3	143-139.3
357	1	143-574 note, 143-577 note
358	1	143-1 L.M., 143-148 L.M.
	7(a)	136-41.3 L.M.
	8(a)	160A-384 L.M.
	(b)	160A-364 L.M.
	9(a)	105-33 L.M., 105-53 L.M.
	10-12	158-7.1 note
	13	158-7.1
	14	132-6 L.M., 132-9 L.M.
	15(a), (b)	153A-343 L.M.
359	1	115C-81
	2	115C-109 note
	3, 4	115C-81 note, 115C-12 note
360	1	105-277.1
	2	105-309
361	1	75A-6.1
	2	75A-6
362	1	105-23
363	1	150B-23.1
	2	150B-23.1 note
364	1(a)	130A-309.54
	(b)	130A-309.54 note
	2	105-187.18
	3	105-187.16 note, 105-187.18 note, 105-266 note, 105-266.1 note, 130A-309.54 note
365	1	130A-294

Ch.	Sec.	1993 General Statutes
366	1	14-306
	2	14-303
	3	14-309
367	1	143-595 to 143-601
	2	143-595 note
368	1	20-7
	2	20-9
	3	20-37.7 note
	4	20-37.16
	5	20-7 note, 20-9 note, 20-37.7 note, 20-37.16 note
369	1	7A-649
	2	7A-649 note
370	1	25-9-107
	2	25A-27
371	1	105-23
372	1	105-164.4
373	1	20-37.6
374	1	6-21.3
	2	14-107
	3	7A-180
	4	7A-273
375	1	90-270.1 to 90-270.7, 90-270.9 to 90-270.11, 90-270.13 to 90-270.16, 90-270.18, 90-270.20, 90-270.21
	2	8-53.3
	3	58-50-30
	4	58-65-1
	5	58-65-75
	6	122C-3
	7	90-270.6 note
376	1-4	131E-176
	5	131E-201
	6	131E-202
	7	131E-203
	8	131E-201 to 131E-203 note
377	1	36A-135 to 36A-140
	2	1-339.4
	3	1-339.10
378	1	153A-301
	2	153A-149
380	1	160A-233 L.M.
381	1	153A-357 L.M.
	2	160A-417 L.M.
382	1	160A-623
	2	160A-625
383	1	131E-177 note
	2, 3	131E-177
384	1	90-100
	2	90-101
385	1	20-183.7
386	1	108A-61.1
	2	143-127.1
387	1	143-138 L.M.
388	1	126-7
	2	126-4

Ch.	Sec.	1993 General Statutes
388	3-5	126-7 note
389	1	143B-492
	2	143B-491
	3	97-2
390	1	131D-2 note, 131D-34 note, 131E-109 note, 131E-129 note 131E-230 to 131E-246
	2	131E-129
	3	131D-35
	4	131D-34
391	1	139-3
	2	139-16 Repealed
	3	139-17 Repealed
	4	139-18 Repealed
	5	139-19 Repealed
	5.1	139-19.1 Repealed
	6	139-20 Repealed
	7	139-21 Repealed
	8	139-22 Repealed
	9	139-23 Repealed
	10	139-24 Repealed
	11	139-25 Repealed
	12	139-26 Repealed
	13	139-27 Repealed
	13.1	139-27.1 Repealed
	14	139-28 Repealed
	15	139-29 Repealed
	16	139-30 Repealed
	17	139-32 Repealed
	18	139-33 Repealed
	19	139-34 Repealed
	20	139-35 Repealed
	21	139-36 Repealed
	22	139-37 recodified as 139-48
	23	139-37.1 recodified as 139-49
	24	139-38 Repealed
	25	139-41
	26	139-42
	27	Repealed
	28, 29	139-44
	30	139-46
	31	139-47 Repealed
	32	139-48
	33(a), (b)	139-49
392	1	115C-290.1 to 115C-290.9
	2	115C-284
	3, 4	115C-290.5 note
	5	115C-290.4 note
393	1	116C-1 to 116C-3
	2	116C-1 note, 116C-2 note
394	1	143-215.24
	2	143-215.25
	3	143-215.25A
	4	143-215.26

		1993
Ch.	Sec.	General Statutes
394	5	143-215.28A
	6	143-215.31
	7	143-215.32
	8	143-215.33
	9	143-215.36
	10	143-215.31 note
395	1	90-96.01
396	1, 2	122C-3
	3	122C-101
	4(a), (b)	122C-132
	5	122C-132.1
	6	143B-147
397	1	126-6.1 Repealed
398	1	Chapter 55A rewritten
	2	55A-1-01 note
399	1	97-80
	2	143-296
	3	97-77
	4	97-80 note, 143-296 note
400	1(a), (b)	143-213
	(c)	143-213, 143-215.3
	(d)	143B-318
	2, 3	143-215.3
	4	143-215.4
	5	143-215.5
	6	143-215.69
	7	143-215.107
	8	143-215.108
	9	143-215.111
	10	143-215.112
	11	105-434, 105-445
	12	105-434 note, 105-445 note
	13	105-445
	14	143-215.3A
	15	143-215.3, 143-215.94B to 143-215.94E, 143-215.94G, 143-215.94J to 143-215.94N, 143-215.94P
	16	143-215.112 note
	17	143-215.108 note
401	1	15A-266 to 15A-266.12
402	1	143-215.94B
	2	143-215.94C
	3	143-215.94E
	4	143-215.94G
	5	143-215.94H
	6	143-215.94M
	7	143-215.94P
	8	119-18
	9	119-18 note
	10	143-215.87
	11	143-215.94C note, 143-215.94G note
403	1	114-19.3
404	1	143-128 L.M.

		1993
Ch.	Sec.	General Statutes
405	18.1	120-123
406	1	116-36.4
407	1	116-11 note
	2	116-11
	3	116-11 note
408	1, 2	58-50-110
	3, 3.1	58-51-80
	4	58-65-60
	5, 5.1	58-67-85
	6	58-50-130
	7	58-50-150
409	1	58-3-100
	1.1	58-33-25
	2	58-33-30
	3	58-33-35
	4	58-33-130
	5	58-42-55
	6	143-143.21 Repealed
	7	143-143.21A
	8	58-33-25
	9	58-40-140
	10	58-36-15
	11	58-36-15 note
	12	58-36-20
	13	58-31-12, 58-31-13
	14	58-51-80
	15	58-63-65
	16	58-71-80
	17	58-71-81
	18	58-71-95
	19, 20	20-310
	21	58-41-10
	22	58-71-71
	23	58-2-52
	24	58-65-60
	25	58-36-30
	26	58-28-5
	27	58-36-1
410	1	132-1 L.M.
411	1	160A-384 L.M.
412	1	14-277.4
	2	14-277.2
413	5	132-1 L.M.
414	10(a), (b)	63-4 L.M.
415	1, 2	18B-101
	3	18B-200
	4	18B-201
	5	18B-503
	6	18B-504
	7-9	18B-603
	10	18B-900
	11	18B-902
	12	18B-904
	13	18B-906
	14, 15	18B-1000
	16	18B-1004
	17-19	18B-1006
	20	18B-1104
	21	18B-1106

Ch.	Sec.	1993 General Statutes
415	22	18B-1108
	23	18B-1113
	24	18B-1114
	25	18B-1116
	26	105-113.68
	27	18B-805
	28	18B-1303
	29	18B-604
416	1	115C-521
418	1	160A-33 L.M., 160A-45 L.M.
	1	93A-73
	2	93A-74
	3	93A-76
419	4, 5	93A-79
	6	93E-1-1 to 93E-1-14
	7	93A-70 to 93A-81 Repealed
	8(a)-(c)	93A-70 note, 93E-1-1 note
	9	93A-3
	10	93A-6
	11	93A-32
	12	93A-34
	13	93A-35
	13.1	120-123
	13.2	105-41
	14	93A-70 note, 93E-1-1 note
420	1	90-39
	2	90-48.2
421	1	85B-6
	2	85B-7.1
	3	85B-4
422	1	75A-3
	2-4	75A-5
423	1	95-241
	2	95-242
	3	95-245
424	1	96-9
425	1	161-10
	2	45-16
	3	45-37.2
426	1, 2	20-118
427	1	126-4 note, 126-7 note
428	1	132-1 L.M.
429	1	58-86-45
432	1	105-151.11
433	1	105-256
434	1	75A-3 L.M., 75A-15 L.M.
	2	75A-3 L.M., 75A-15 L.M., 75A-17 L.M.
435	1	1-110
	2	7A-228
	3	1-288
	4	1-109
	5	6-24
	6	7A-305

Ch.	Sec.	1993 General Statutes
436	1	22B-1
	2	22B-3
437	1	14-414
438	1	7A-506
	2	7A-509
439	1	90-21.14
440	1	20-295
	2	20-79
	3	20-288
	4	20-79.2
	5	20-79.3 Repealed
	6	20-95
	7	20-87
	8	20-110
	9	20-111
	10	20-293 Repealed
	11	20-294
	12	20-75
	13	20-79.01
441	1	133-28
442	1	105-113.4
	2	105-113.6
	3	105-113.9
	4	105-113.10
	5	105-113.12
	6	105-113.13
	7	105-113.18
	8	105-113.19, 105-113.20 Repealed, 105-113.22, 105-113.23 Repealed, 105-113.25 Repealed, 105-113.28 Repealed, 105-113.34 Repealed
	9	105-113.21
	9.1 (a), (b)	105-113.24
	10	105-113.26
	11	105-113.27
	12	105-113.31
	13	105-113.32
	14	105-113.18 note, 105-113.19 note, 105-113.21 note, 105-113.25 note
	15	105-113.4 note
443	1	105-163.010
	2	105-163.011
	3	105-163.012
	4	105-163.013
	5	105-163.014
	6	105-241.1
	7	105-163.010 to 105-163.014 Repealed
	8	105-134.6
	9	105-163.013
	10	105-163.013 note, 105-163.014 note
444	1	143B-437A
445	1	159B-18
446	1	147-54.11 note
447	1	125-11.12 Repealed

Ch.	Sec.	1993 General Statutes
448	1, 2	130A-309.14
	3	130A-309.14A
	4	143-169
	5	143-169.1
449	1(e)	132-1 L.M.
450	1	105-228.90
	2	105-241
	3	105-130.19
	4	105-157
	5	105-160.7
	6	105-163.6
	7	105-164.16
	8	105-164.17 Repealed
	9	105-164.18 Repealed
	10	105-236
	11	105-239.1
	12	105-434
	13	105-449.19
	14	105-449.21
452	1	58-3-71
	2	58-3-75
	3	58-3-81
	4	58-7-31
	5	58-7-50
	6	58-7-115
	7	58-7-150
	8	58-7-162
	9	58-7-163
	10-13	58-7-170
	14	58-7-173
	14.1	58-7-183
	15, 16	58-7-192
	17	58-8-20
	18	58-9-1
	19	58-9-2
	20	58-9-6
	21	58-9-11
	22	58-9-16
	23	58-9-21
	24	58-9-26
	25	58-13-10
	26-29	58-19-15
	30-32	58-19-25
	33	58-19-30
	34	58-19-45
	35	58-22-10
	36	58-22-15
	37	58-22-20
	38	58-22-40
	39	58-23-26
	40	58-30-71
	41	58-30-95
	42	58-7-21
	43-48	58-34-2
	49	58-34-10
	50	58-34-15
	51	58-48-20
	52-56	58-58-50
	57-59	58-58-55
	60	58-62-16

Ch.	Sec.	1993 General Statutes
452	61	58-62-21
	61.1, 62	58-62-41
	63	58-64-20
	64	58-64-33
	65	58-2-175 Repealed, 58-3-70 Repealed, 58-3-80 Repealed, 58-7-32 Repealed, 58-7-135 Repealed, 58-7-190 Repealed, 58-9-1 to 58-9-30 Repealed, 58-12-1 to 58-12-30 Repealed, 58-34-20 Repealed
	66	58-2-175, 58-3-70, 58-3-71 note, 58-3-75 note, 58-3-80, 58-3-81 note, 58-7-21 note, 58-7-31, 58-7-32 note, 58-7-50 note, 58-7-115 note, 58-7-135 note, 58-7-150 note, 58-7-162, 58-7-163 note, 58-7-170 note, 58-7-173 note, 58-7-183 note, 58-7-190 note, 58-7-192 note, 58-8-20 note, 58-9-1 to 58-9-30 note, 58-12-1 to 58-12-20 note, 58-13-10 note, 58-19-15 to 58-19-30 note, 58-19-45 note, 58-22-10 to 58-22-20 note, 58-22-40 note, 58-23-25, 58-23-26 note, 58-30-71 note, 58-30-95 note, 58-34-2 note, 58-34-10 to 58-34-20 note, 58-58-50, 58-58-55 note, 58-62-16 note, 58-62-21 note, 58-62-41 note, 58-64-20 note, 58-64-33 note
453	1(c)	132-1 L.M.
454	1(c)	132-1 L.M.
455	1	90-85.21A
456	1	20-97
	1.1, 1.2	20-97 L.M.
457	1	143-260.10F
458	1	157-39.1
459	1	105-273
	2	105-275
	3	105-282.1
460	1, 2	163-166
461	1	132-1.4
	2	114-15
462	1	7A-649
463	1	25-2A-101 to 25-2A-109, 25-2A-201 to 25-2A-221, 25-2A-301 to

Ch.	Sec.	1993 General Statutes
463	1	25-2A-310, 25-2A-401 to 25-2A-407, 25-2A-501 to 25-2A-532
	2	25-1-201
	3	25-9-113
	4	25-2A-101 note
	5	22B-10
464	1	58-39-15
	2	58-50-30
	3(a)	135-40.7B
	3.1	58-65-1
	4	135-40.7B
	5	135-40.7A
	6	135-40.6
	7	135-40.7
465	1	115C-521
466	1	113-202
	2	113-202.1
	3	113-202.2
	4	113-154
	5	143-214.2B
	6	113-202 note, 120-70.60 note
	7	113-154 note, 113-202 note, 113-202.1 note, 113-202.2 note, 143-214.2B note
467	1	105-187.6
	2	20-66
	3	105-187.3
	4	20-88
	5	20-85
469	1	160A-384
	2	153A-343
	3(a)	153A-323 L.M., 153A-343 L.M., 160A-364 L.M., 160A-384 L.M.
	(b)	153A-323 note, 153A-343 note, 160A-364 note, 160A-384 note
	4(a)	153A-343 L.M., 160A-384 L.M.
	(b)	153A-343 note, 160A-384 note
	5(a), (b)	153A-343 note, 160A-384 note
	6(a)	153A-343 note, 160A-384 note
470	1	20-118
471	1, 2	130A-290
	3	105-187.20 to 105-187.24
	4	130A-309.80 to 130A-309.86
	5	130A-309.12
	6	130A-309.81
	7	130A-309.82, 130A-309.83 Repealed
	8	130A-309.12
	9	130A-309.85
471	10	105-187.24
472	1(c)	132-1 L.M.
473	1, 2	130A-294
474	1	95-135
	2	95-138
475	1	115C-302
	2	115C-316
476	1	40A-40 L.M.
480	1, 2	160A-29 L.M.
481	1	143-468
	1.1, 2	143-442
482	1	90-405 to 90-408
	2	90-405 to 90-408 note
483	1	143B-361 to 143B-363
	2	136-14.1
	3	136-17.2
	4	143B-350
	5	143B-350 note
484	1	105-164.3
	2	105-164.4
	3	105-164.13
485	1	105-213
	2	105-113.82
	3	105-23
	4	105-125
	5	105-114
	6	105-127
	7	105-130.40
	8	105-131.2
	9	105-134.6
	10	105-134.7
	11	105-151.17
	12	105-163.013
	13	105-187.19
	14	105-266.1
	15	105-269.3
	16	105-277A
	17	105-285
	18	105-330.1
	19	105-395
	20	105-441
	21	105-449.34
	22	105-466
	23	105-469
	24	105-472
	25	105-482
	26	105-483
	27	105-498
	28	160A-623
	29	105-449.16
	30	105-434
	31	105-259
	32	75-28
	33	153A-148.1
	34	160A-208.1
	35	105-289
	36	105-449.57
	37	120-19
	38	132-1.1
	39	132-3

		1993
Ch.	Sec.	General Statutes
486	1	130A-455 to 130A-460
487	1	143B-179.5
	2	122C-112
	3	122C-146
488	1	136-18
	2	136-44.20
489	1	15A-615
490	1	20-37.7
	2	20-37.7 note
491	1	160A-279
	1	160A-279 L.M.
492	1	93A-4A
	2	115D-5
493	1	136-142
	2	136-144
	3	136-147
	4	136-149
494	1	105-125
	2	105-130.11
	3	105-212
495	1	58-8-60
	2, 3	58-8-60 note
	4	105-228.4
496	1	159G-9
	2	159G-17
	3	159G-18
	4	143-215.3
497	1	920-5-14
	2	159-101 to 159-114
	3	159-48
	4	159-55
	5	159-79
	6	159-120
	7	159-122
	8	159-123
	9	159-125
	10	159-129
	11	159-132
	12	159-160
	13	159-163.1
	14	159-165
	15	159-176
	16	160A-505
	17	160A-512
	18	160A-515.1
	19	158-7.3
	20	105-284
	21	105-277.11
	23	158-7.1 L.M.
	24	158-7.1
	25, 26	105-277.11 note, 105-284 note, 158-7.1 note, 158-7.3 note, 159-101 to 159-114 note, 159-48 note, 159-55 note, 159-79 note, 159-120 note, 159-122, 159-123 note, 159-125 note,

		1993
Ch.	Sec.	General Statutes
497	25, 26	159-129 note, 159-132 note, 159-160 note, 159-163.1 note, 159-165 note, 159-176 note, 160A-505 note, 160A-512 note, 160A-515.1 note, N.C. Const., Art. V, § 14 note
	27, 28	N.C. Const., Art. V, § 14 note
	29	158-7.1 note
498	1	15A-1228
499	1	131E-116
	2	131E-131
500	1	90-181
	2	90-181.1
	3, 4	90-182
	5	90-183
	6	90-184
	7	90-185
	8	90-186
	9	90-187
	10	90-187.1
	11	90-187.3
	12	90-187.4
	13	90-187.5
	14	90-187.6
	15	90-187.8
	16	90-187.10
	17	90-187.11
	18	90-187.14
	19	90-182 note
501	1	143B-285.10 to 143B-285.15 Repealed
	2	7A-29
	2.1	104E-5
	3	104E-6.2
	4	104E-9
	5	104E-27
	5.1	104F-2.1
	6	104G-2
	7	104G-19
	8	104G-21
	9	104G-22
	10	113-8.01
	11	120-70.33
	12	120-123
	13	130A-293
	14	130A-294
	15	130A-296 Repealed
	16	130B-2
	17	130B-4
	18	130B-5
	19	130B-6
	20	130B-7
	21, 22	130B-19
	23, 24	130B-20
	25	130B-21
	26	130B-22
	27	143B-279.3

Ch.	Sec.	1993 General Statutes
501	28	143B-285.20 to 143B-285.25
	29	150B-1
	30	143B-285.23 note
502	1	143B-426.34A, 143B-426.34B
503	1	143B-181.55
	2	143B-181.1
504	1	58-2-165
	2	58-4-5
	3	58-5-55
	4	58-7-35
	5	58-7-45
	6	58-7-183
	7	58-13-5
	8	58-13-15
	9	58-13-20
	10	58-13-25
	11	58-19-10
	12	58-19-15
	13	58-19-25
	14	58-19-50
	15	58-26-1
	16	58-23-40
	17	58-26-10
	18	58-26-15
	19	58-26-20
	20	58-28-5
	21	58-31-55
	22-25	58-33-25
	26	58-33-30
	27-28	58-33-45
	29	58-33-50
	30	58-48-125
	31	97-99
	32	58-51-30
	33	58-71-85
	34	143-143.14
	35	143-150
	36	143-151.17
	37	58-33-30
	38	58-54-15
	39	58-55-30
	40	58-57-107 recodified as 58-3-147
	41	58-27-5
	42	58-48-42
	43	58-7-170
	44	58-7-173
	45	58-23-26
	46	58-57-105
	47, 48	58-1-25
	49	58-1-30
	50, 51	58-1-35
	52	58-1-25 to 58-1-50 note
505	1	162A-6.1
506	1	58-3-150
	2	58-3-170
	3	58-58-145
	4	58-51-15
506	4.1	58-51-59
	4.2	58-65-94
	4.3	58-67-78
	4.4	58-50-156
507	1	105-164.3
508	1	18B-301
	2	18B-303
	3	18B-304
	4	18B-401
	5	18B-1001
	6	18B-1006
	7	18B-1115
509	1	95-28.3
	2, 3	115C-238.8
	4	115C-391
510	1	153A-224
511	1	130A-295.02
512	1	147-86.20 to 147-86.27
	2	143B-426.39
	3	96-4
	4	105A-3
513	1	130A-309.12
	2(a)	130A-295.02 note
	2(b)	130A-295.02
	3	74-54.1
	4	130A-309.14 note, 136-18 note
	5	106-769
	6	130A-33
	7(a)	143-355
	7(b)	143-355 note
	8	74-24.4
	9	110-91
	10	147-54.12
	11	105-164.13
	12	130A-247
	13	130A-248
	14	130A-250
514	1	90-329 to 90-344
	2	8-53.8
	3	7A-551
	4	7A-551 note, 8-53.8 note
515	1	113-152
	2	113-153
	3	113-154.1
	4	113-156
	5	113-161
	6	113-129
	7	113-152 note, 113-153 note, 113-154.1 note, 113-156 note, 113-161 note
	8	113-154.1 note
516	1-3	7A-517
	4	7A-543
	5	7A-544
	6	7A-544.1
	7	7A-547
	8	7A-548

Ch.	**Sec.**	**1993 General Statutes**
516	9	7A-550
	10	7A-551
	11	7A-552
	12	122C-54
517	1	110-136.3
	2	110-136.5
	3	14-322
	4	15A-1344.1
	5	50-13.4
	6	50-13.9
518	1	93
	2	93-1
	3	93-2
	4	93-6
	5	93-7 Repealed
	6	93-9
	7	93-10
	8	93-12
519	1	146-22.2
520	1, 2	143-214.5 note
	3	158-7.1 L.M.
521	2	153A-22 note
522	1	115C-21
	2	115C-146.3
	3	115C-238.2
	4	115C-318
	5	115C-489.4
	6	115D-3
	7	120-65
	8	121-4
	9	122C-113
	10	126-4
	11	130A-236
	12	143A-11
	13	143A-39
	14	143A-39 to 143A-44 Repealed
	15	143A-48
	16	143B-181
	17	143B-417
	18	147-45
	20	115C-102.5
	21-23	115C-106 note, 122C-147 note, 130A-5 note, 134A-1 note
523	1	32A-15
	2	32A-20
	3	32A-25
	4	32A-15 note, 32A-20 note, 32A-25 note
524	1	136-129.2
	2	136-130
	3	136-131
	4	136-18
525	1	58-33-76
	2	58-3-180
527	1	105-130.42
	2	105-151.23
528	1	143-143.3
529	1(a),	58-68A-21 note

Ch.	**Sec.**	**1993 General Statutes**
529	1(b)	
	1.1	58-68A-1 to 58-68A-10
	1.2	143-610 to 143-614
	1.3	143-613
	1.4	143-614 note
	1.5-1.7	143-612 note
	2.1	58-68A-1
	3.1	143-621 to 143-636
	3.2	58-50-130
	3.3	58-50-110
	3.4	58-50-113 Repealed
	3.5	58-50-115
	3.6	58-50-125
	3.7	58-50-130
	3.8	58-53-35
	3.9	120-123
	3.10	143-626 note
	3.11	143-625 note
	3.12	143-621 note
	3.13	143-627 note
	4.1	58-50-10 Repealed
	4.2	58-3-171, 58-3-172
	4.3	90-410, 90-411
	5.1	131E-192.1 note
	5.2	131E-192.1 to 131E-192.13
	5.3	131E-7
	5.4	131E-7 note, 131E-192.1 note
	6.1	131E-20
	7.1	58-50-50
	7.2	58-67-10
	7.3	108A-55
	7.4	143-48.1
	7.5	90-85.29
	7.6	131E-248 recodified as 131E-250
	7.7	131E-79.1
	8.1	58-3-171, 58-3-172 note, 58-50-10 note, 58-50-50 note, 58-50-110 note, 58-50-113 note, 58-50-115 note, 58-50-125 note, 58-50-130 note, 58-53-35 note, 58-67-10 note, 90-85.29 note, 90-410, 90-411 note, 108A-55 note, 120-123 note, 131E-7 note, 131E-20 note, 131E-79.1 note, 131E-192.1 to 131E-192.13 note, 131E-250 note, 143-48.1 note, 143-614 note, 143-621 to 143-636 note
530	1	131E-102
	2	131D-2
	3	88A-4

Ch.	Sec.	1993 General Statutes
530	4	88A-11
531	1	120-4.25
	2	120-4.31
	3	128-27
	4	128-38.2
	5	135-5
	6	135-18.7
	7	135-62
	8	135-74
	9	135-94
532	1	105-237
	2	105-241.1
	3	105-241.2
	4	105-241.5
	5	105-242
	6	105-256
	7	105-258.1
	8	105-260
	9	105-264
	10	105-266.1
	11	105-122
	12	105-130.4
	13	143B-218.1
	14	105-241.2 note
533	1	20-4.21 to 20-4.30
	2, 3	20-7
	4	20-9
	5	20-17.4
	6	20-23
	7	20-24
	8	20-34.1
	9	20-62 Repealed
	10	20-115.1
	11	20-118
	12	20-7
	13	136-55.1
	14	136-63
534	1	143B-272 to 143B-272.19 renumbered as 143B-273 to 143B-273.19
	2	143B-272.6 to 143B-272.8 note, 143B-272.14 note
535	1-3	164-35 note
	4	164-37
536	1	158-7.1
	2	158-7.1 L.M.
	3, 4	158-7.1 L.M.
	5	158-7.1 note
	6	158-7.1 note
537	1	7A-586
	2	7A-659
	3	7A-661
	4	7A-660
538	1	15A-1340.10 to 15A-1340.23
	2	14-1.1 Repealed
	2.1	14-2 Repealed
	3	14-2.1 Repealed
538	4	14-2.2 Repealed
	5	14-2.4
	6	14-2.5
	6.1	14-2.6
	7	14-3
	8	14-4
	9	14-7.6
	10	15A-1022
	11	15A-1301
	12	15A-1331
	13	15A-1332
	14	15A-1340.1 to 15A-1340.7 Repealed
	15	15A-1341
	16	15A-1343
	17	15A-1343.1
	17.1	15A-1343.2
	18	15A-1344
	19	15A-1351
	20	15A-1355
	20.1	15A-1368 to 15A-1368.6
	21	15A-1370.1
	22	15A-1371
	23	15A-1372
	24	15A-1380.1, 15A-1380.2 Repealed
	25	15A-1415
	26	15A-1442
	27	15A-1444
	28	15A-1445
	29	15A-2002
	30	90-95
	31	148-4.1
	32	148-13
	33	148-32.1
	34	148-49.10 to 148-49.16 Repealed
	35	7A-273
	36	162-60
	37	15A-1352
	38	15A-1373
	39	15A-1374
	40	15A-1376
	41	143B-264
	42	143B-266
	43	143B-267
	44	148-52.1
	45	148-53
	46	148-54
	47	148-56
	48	148-57
	49	148-57.1
	50	148-59
	51	148-60.1
	52	148-62.1
	53	148-63
	54	148-64
	55	148-65.3
539	1	1-324.5
	2	1-531

Ch.	Sec.	1993 General Statutes
539	3	1-596
	4	7A-112
	5	7A-602
	6-8	10A-12
	9	14-4
	10	14-10
	11	14-12
	12	14-12.15
	13	14-15
	14	14-16
	15	14-32.1
	16	14-33
	17	14-34
	18	14-34.3
	19	14-35
	20	14-36
	21	14-40
	22	14-43.1
	23	14-43.2
	24	14-46
	25	14-47
	26	14-54
	27	14-56.1
	28	14-56.2
	29	14-56.3
	30	14-68
	31	14-69
	32	14-69.1
	33	14-69.2
	34	14-72
	35	14-72.1
	36	14-72.2
	37	14-76
	38	14-76.1
	39	14-77
	40	14-102
	41	14-103
	42	14-104
	43	14-105
	44	14-106
	45	14-107
	46	14-108
	47	14-109
	48	14-110
	49	14-111.1
	50	14-111.2
	51	14-111.3
	52	14-112
	53	14-113
	54	14-113.6
	55	14-113.17
	56	14-114
	57	14-115
	58	14-116
	59	14-117
	60	14-117.2
	61	14-118
	62	14-118.1
	63	14-118.2
	64	14-118.3
539	65	14-118.5
	66	14-122.1
	67	14-127
	68	14-128
	69	14-129
	70	14-130
	71	14-131
	72	14-132
	73	14-132.2
	74	14-133
	75	14-134.2
	76	14-134.3
	77	14-135
	78	14-136
	79	14-137
	80	14-140
	81	14-141
	82	14-142
	83	14-144
	84	14-145
	85	14-146
	86	14-147
	87	14-148
	88	14-151
	89	14-151.1
	90	14-152
	91	14-153
	92	14-154
	93	14-155
	94	14-156
	95	14-157
	96	14-158
	97	14-159
	98	14-159.2
	99	14-159.6
	100	14-159.8
	101	14-159.12
	102	14-159.13
	103	14-159.21
	104	14-159.22
	105	14-160
	106	14-160.1
	107	14-162
	108	14-163.1
	109	14-165
	110	14-166
	111	14-167
	112	14-168
	113	14-168.1
	114	14-168.4
	115	14-169
	116	14-175
	117	14-176
	118	14-179
	119	14-184
	120	14-186
	121	14-188
	122	14-190.4
	123	14-190.5
	124	14-190.9

Ch.	Sec.	1993 General Statutes
539	125	14-190.14
	126	14-190.15
	127	14-195
	128	14-196
	129	14-197
	130	14-199
	131	14-202
	132	14-202.12
	133	14-204.1
	134	14-208
	135	14-222
	136	14-223
	137	14-225
	138	14-225.1
	139	14-226.1
	140	14-227
	141	14-227.3
	142	14-230
	143	14-231
	144	14-232
	145	14-234
	146	14-234.1
	147	14-236
	148	14-237
	149	14-238
	150	14-239
	151	14-241
	152	14-242
	153	14-243
	154	14-244
	155	14-246
	156	14-251
	157	14-253
	158	14-255
	159	14-256
	160	14-258.1
	161	14-259
	162	14-268
	163	14-269
	164	14-269.2
	165	14-269.3
	166	14-269.4
	167	14-269.6
	168	14-275.1
	169	14-276.1
	170, 171	14-277
	172	14-277.1
	173	14-277.3
	174	14-277.2
	175	14-279
	176	14-279.1
	177	14-281
	178	14-281.1
	179	14-283
	180	14-284
	181	14-284.1
	182	14-286
	183	14-286.1
	184	14-286.2
	185	14-287

Ch.	Sec.	1993 General Statutes
539	186	14-288
	187, 188	14-288.2
	189	14-288.4
	190	14-288.5
	191	14-288.6
	192	14-288.7
	193	14-288.9
	194	14-288.12
	195	14-288.13
	196	14-288.14
	197	14-288.15
	198	14-288.19
	199	14-289
	200	14-290
	201	14-291
	202	14-291.1
	203	14-291.2
	204	14-292
	205	14-293
	206	14-294
	207	14-295
	208	14-297
	209	14-300
	210	14-303
	211	14-309
	212	14-309.5
	213	14-309.11
	214	14-309.14
	215	14-309.15
	216	14-313
	217	14-315
	218	14-316
	219	14-316.1
	220	14-317
	221	14-318
	222	14-318.1
	223	14-318.2
	224	14-321
	225, 226	14-322
	227	14-326.1
	228, 229	14-329
	230	14-342
	231	14-343
	232	14-344
	233	14-346
	234	14-353
	235	14-355
	236	14-356
	237	14-358
	238	14-359
	239	14-360
	240	14-361
	241	14-361.1
	242	14-362
	243	14-362.1
	244	14-363
	245	14-363.1
	246	14-366
	247	14-368
	248	14-370

Ch.	Sec.	1993 General Statutes
539	249	14-371
	250	14-372
	251	14-380.1
	252	14-380.2
	253	14-381
	254	14-382
	255	14-383
	256	14-384
	257	14-385
	258	14-389
	259	14-391
	260	14-394
	261	14-395
	262	14-395.1
	263	14-396
	264	14-397
	265	14-398
	266, 267	14-399
	268	14-399.2
	269	14-400
	270	14-401
	271	14-401.1
	272	14-401.2
	273	14-401.3
	274	14-401.4
	275	14-401.5
	276	14-401.6
	277	14-401.7
	278	14-401.8
	279	14-401.9
	280	14-401.10
	281	14-401.12
	282	14-401.13
	283	14-401.14
	284	14-402
	285	14-408
	286	14-409.1
	287	14-409.8
	288	14-415
	289	14-422
	290	14-424
	291	14-437
	292	14-444
	293	14-454
	294	14-455
	295	14-456
	296	15-176
	297	15A-261
	298	15A-502
	299	15A-541
	300	15A-542
	301	15A-543
	302	15A-731
	303	15B-7
	304	16-4
	305	16-5
	306	17-25
	307	17-27
	308	17-28
	309	17D-4
539	310	18B-102
	311	18B-302
	312	18B-401
	313	18B-502
	314	19A-13
	315	19A-33
	316	19A-34
	317	19A-36
	318	19A-48
	319	20-11
	320-322	20-28
	323	20-29
	324	20-35
	325	20-37.7
	326	20-37.8
	327	20-37.21
	328	20-39
	329	20-45
	330	20-47
	331	20-52.1
	332	20-59
	333-336	20-63
	337	20-71.4
	338	20-72
	339	20-73
	340	20-74
	341	20-75
	342	20-77
	343	20-79 note
	344	20-94
	345	20-96
	346	20-102.1
	347	20-106.2
	348	20-107
	349	20-108
	350	20-109.1
	351-353	20-111
	354	20-115.1
	355	20-116
	356	20-118.1
	357	20-119
	358	20-120
	359	20-124
	360	20-127
	361	20-130.1
	362	20-137.2
	363	20-138.2
	364	20-138.3
	365	20-140
	366, 367	20-141
	368-370	20-141.3
	371	20-141.4
	372	20-157
	373-375	20-166
	376, 377	20-166.1
	378	20-167.1
	379	20-176
	380	20-183.11
	381	20-215.4
	382	20-217

Ch.	Sec.	1993 General Statutes
539	383	20-219.2
	384	20-279.31
	385	20-284
	386	20-308
	387	20-312
	388	20-313
	389	20-313.1
	390	20-327
	391	20-350
	392	20-371
	393	20-390
	394	20-395
	395	20-396
	396	20-397
	397	23-9
	398	23-12
	399	23-47
	400	24-17
	401	34-13
	402	42-11
	403	42-13
	404	42-22
	405	42-22.1
	406	44A-24
	407	44A-32
	408	47-32.2
	409	47-112
	410	48-3
	411	48-25
	412	48-37
	413	48-38
	414	49-2
	415	51-7
	416	51-13
	417	51-15
	418	53-63
	419	53-86
	420	53-125
	421	53-126
	422	53-127
	423	53-128
	424	53-134
	425	53-166
	426	53-208
	427	53-247
	428	54-109.5
	429	54-109.105
	430	54-157
	431, 432	54B-56
	433	54B-66
	434	54B-78
	435, 436	54C-54
	437	54C-64
	438	54C-79
	439	55-1-29
	440	55-1-32
	441	55A-80 note
	442	58-1-25
	443	58-1-30
	444	58-1-35
539	445	58-2-200
	446	58-3-60
	447	58-3-85
	448	58-3-130
	449	58-16-20
	450	58-21-105
	451	58-24-180
	452	58-25-70
	453	58-27-5
	454	58-28-45
	455	58-30-12
	456	58-31-60
	457	58-33-95
	458	58-33-100
	459	58-33-105
	460	58-33-110
	461	58-33-115
	462	58-33-120
	463	58-35-30
	464	58-35-90
	465	58-39-115
	466	58-43-35
	467	58-50-70
	468	58-57-80
	469	58-64-75
	470	58-67-165
	471	58-69-35
	472	58-70-1
	473	58-71-185
	474	58-81-5
	475	58-81-10
	476	58-82-1
	477	62-144
	478	62-150
	479	62-221
	480	62-224
	481	62-226
	482	62-229
	483	62-313
	484	62-318
	485	62-319
	486	62-320
	487	62-322
	488	62-323
	489	62-325
	490	62-326
	491	62-327
	492	62A-12
	493	63-18
	494	63-23
	495	63-26
	496	63-26.1
	497	63-27
	498	63-35
	499	63A-7
	500	65-57
	501	65-71
	502	65-72
	503	66-4
	504	66-10

Ch.	Sec.	1993 General Statutes
539	505	66-11
	506	66-11.1
	507	66-16
	508	66-22
	509	66-27
	510	66-27.3
	511	66-27.5
	512	66-34
	513	66-58
	514	66-64
	515	66-66
	516	66-67.2
	517	66-71
	518	66-75
	519	66-81
	520	66-86
	521	66-97
	522	66-108
	523	66-109
	524	66-145
	525	66-167
	526	66-169
	527	66-172
	528	66-173
	529	67-2
	530	67-3
	531	67-4
	532	67-4.2
	533	67-4.3
	534	67-12
	535	67-16
	536	68-16
	537	68-21
	538	68-22
	539	68-24
	540	68-25
	541	68-44
	542	70-4
	543	70-40
	544, 545	72-7.1
	546	72-30
	547	72-37
	548	72-38
	549	72-43
	550	72-44
	551	72-51
	552	73-4
	553	74-24.14
	554	74-30
	555	74-64
	556	74-87
	557	74C-17
	558	74D-11
	559	75-6
	560	75-12
	561	75-28
	562	75-30
	563, 564	75A-5
	565	75A-5.1
	566	75A-18

Ch.	Sec.	1993 General Statutes
539	567	75A-47
	568	75A-48
	569	75D-6
	570	76-40
	571	76-41
	572	76-42
	573	76-43
	574	76-47
	575	76-57
	576	76-58
	577	76A-16
	578	76A-46
	579	77-7
	580	77-12
	581	77-13
	582	77-14
	583	77-37
	584	80-20
	585	80-22
	586	80-23
	587	80-40
	588	80-41
	589	80-42
	590	80-43
	591	80-44
	592	80-66
	593	81A-29
	594	81A-80
	595	83A-16
	596	84-2
	597	84-8
	598	84-10
	599	84-38
	600	85B-9
	601	86A-20
	602	87-13
	603	87-14
	604	87-25
	605	87-42
	606	87-48
	607	87-61
	608	88-28
	609	88A-4
	610	89A-8
	611	89B-15
	612	89C-23
	613	89E-22
	614	90-12
	615	90-18
	616	90-27
	617, 618	90-29.2
	619	90-40
	620	90-48
	621	90-85.40
	622	90-108
	623	90-113.13
	624	90-113.22
	625	90-113.23
	626	90-113.24
	627	90-117.4

Ch.	Sec.	1993 General Statutes
539	628	90-118.11
	629	90-124
	630	90-136
	631	90-147
	632	90-171.45
	633	90-178.7
	634, 635	90-187.6
	636	90-187.12
	637	90-202.3
	638	90-210.25
	639	90-210.43
	640	90-210.50
	641	90-220.12
	642	90-233.1
	643	90-251
	644	90-252
	645	90-255.1
	646	90-270.17
	647	90-270.35
	648	90-270.79
	649	90-288
	650	90-306
	651	90-341
	652	90-366
	653	90A-66
	654	90B-12
	655	91A-11
	656	93-13
	657	93A-8
	658	93A-56
	659	93A-81
	660	93D-15
	661	95-25.21
	662	95-28
	663	95-47.9
	664	95-50
	665	95-69.18
	666	95-75
	667	95-99
	668	95-104
	669	95-110.11
	670	95-124
	671	95-139
	672	95-194
	673	96-15.2
	674-676	96-18
	677	97-21
	678	97-60
	679	97-76
	680	97-90
	681	97-94
	682	97-100
	683	102-4
	684	103-2
	685	104E-23
	686	104E-29
	687	104F-3
	688	105-33
	689	105-50
	690, 691	105-53
539	692	105-77
	693, 694	105-86
	695	105-88
	696	105-90
	697	105-99
	698, 699	105-109
	700	105-113.33
	701	105-113.73
	702	105-113.112
	703	105-163.44
	704	105-164.9
	705	105-164.29
	706	105-228.34
	707	105-233
	708	105-234
	709, 710	105-236
	711	105-249
	712	105-259
	713	105-290
	714	105-291
	715, 716	105-296
	717	105-308
	718	105-310
	719	105-316.6
	720	105-322
	721	105-334
	722	105-352
	723	105-359
	724	105-368
	725	105-369
	726	105-373
	727	105-440
	728	105-441
	729	105-444
	730	105-447
	731	105-449
	732	105-449.34
	733	105-449.41
	734	105-449.51
	735	105-449A
	736	106-9.2
	737, 738	106-22
	739	106-50.41
	740	106-65.33
	741	106-65.48
	742	106-65.78
	743	106-92.14
	744	106-124
	745	106-168.15
	746	106-189.2
	747	106-196
	748	106-197
	749	106-202.19
	750	106-245.24
	751	106-245.38
	752	106-255
	753	106-266
	754	106-266.14
	755	106-267.4
	756	106-268.1

Ch.	Sec.	1993 General Statutes
539	757	106-275
	758	106-277.24
	759	106-284.20
	760, 761	106-284.44
	762	106-307
	763	106-307.6
	764	106-310
	765	106-311
	766	106-312
	767	106-314
	768	106-316.4
	769	106-321
	770	106-349
	771	106-360
	772	106-362
	773	106-397
	774	106-398
	775	106-404
	776	106-405
	777	106-405.9
	778	106-405.19
	779	106-411
	780	106-414
	781	106-417
	782	106-423.1
	783	106-439
	786	106-451.28
	787	106-454
	788	106-455
	789	106-464
	790	106-465
	791	106-469
	792	106-501
	793	106-514
	794	106-515
	795	106-516.1
	796	106-518
	797	106-520.7
	798	106-549
	799	106-549.27
	800	106-549.28
	801	106-549.34
	802	106-549.36
	803-805	106-549.68
	806	106-579.11
	807	106-579.12
	808	106-614
	809	106-644
	810	106-668
	811	106-714
	812	106-776
	813	108A-39
	814	108A-53
	815	108A-57
	816	108A-60
	817	108A-64
	818	108A-65
	819, 820	108A-80
	821	110-20.1
539	822	110-48
	823	110-55
	824	110-103
	825	111-23
	826	112-32
	827	112-36
	828	113-25
	829	113-34
	830, 831	113-35
	832	113-55
	833	113-58
	834	113-60.3
	835	113-60.29
	836	113-135
	837	113-137
	838	113-167
	839	113-187
	840	113-202
	841	113-207
	842	113-208
	843	113-222
	844	113-229
	845	113-230
	846	113-262
	847	113-264
	848	113-266
	849	113-268
	850, 851	113-269
	852, 853	113-270.1
	854	113-273
	855	113-275
	856, 857	113-276.2
	858	113-277
	859	113-286
	860,	113-290.1
	861	
	862	113-291.1
	863	113-294
	864	113-295
	865	113-300.3
	866	113-303
	867	113-307.1
	868	113-315.9
	869	113-315.34
	870	113-380
	871	113-409
	872	113A-42
	873	113A-64
	874	113A-126
	875	113A-170
	876	113A-195
	877	113A-226
	878	113B-24
	879	115B-6
	880	115C-13
	881	115C-45
	882	115C-276
	883	115C-288
	884	115C-307

Ch.	Sec.	1993 General Statutes
539	885	115C-317
	886	115C-323
	887	115C-379
	888	115C-380
	889, 890	115C-383
	891	115C-447
	892	115C-525
	893	115C-534
	894	115D-96
	895	116-213
	896, 897	116-235
	898	116B-28
	899	119-4
	900	119-13
	901	119-13.3
	902	119-16.2
	903	119-16.3
	904	119-25
	905	119-27
	906	119-32
	907	119-33
	908	119-35
	909	119-39
	910	119-41
	911	119-59
	912	120-32
	913	120-32.1
	914	120-47.9
	915	121-4
	916	121-5
	917	121-28
	918	122C-25
	919	122C-28
	920	122C-52
	921	122C-65
	922, 923	122C-66
	924, 925	122C-158
	926	122C-192
	927	122C-406
	928	124-3
	929	125-11
	930	126-13
	931	126-14
	932	126-14.1
	933	126-18
	934	126-27
	935	126-28
	936	127A-131
	937	127A-151
	938	127A-152
	939	127B-5
	940	127B-7
	941	127B-15
	942	128-4
	943	128-12
	944	128-28
	945	128-32
	946	130A-25
	947	130A-26
	948	130A-55

Ch.	Sec.	1993 General Statutes
539	949	130A-65
	950	130A-196
	951	130A-304
	952	131C-22
	953	131D-2
	954	131D-6
	955	131D-10.7
	956	131D-13
	957	131E-80
	958	131E-81
	959	131E-90
	960	131E-109
	961	131E-141.1
	962	131E-151
	963	131E-154.8
	964	131E-161
	965	131E-207
	966	132-3
	967	132-4
	968	132-5
	969	133-4
	970	133-32
	971	134A-25
	972	135-6
	973	135-10
	974-977	136-18
	978	136-18.4
	979	136-20
	980	136-26
	981	136-32
	982	136-32.1
	983	136-32.2
	984	136-33
	985	136-72
	986	136-80
	987	136-89
	988	136-89.58
	989	136-90
	990	136-91
	991	136-92
	992	136-93
	993	136-94
	994	136-102
	995	136-102.4
	996	136-102.6
	997	136-125
	998	136-135
	999	136-145
	1000	139-18
	1001	139-27
	1002	143-32
	1003	143-34
	1004	143-58.1
	1005	143-115
	1006	143-116.6
	1007	143-129
	1008	143-129.1
	1009	143-138
	1010	143-143.24
	1011	143-151

Ch.	Sec.	1993 General Statutes
539	1012	143-151.18
	1013	143-151.36
	1014	143-152
	1015	143-153
	1016	143-214.2A
	1017	143-214.4
	1018,	143-215.6B
	1019	
	1020	143-215.17
	1021	143-215.36
	1022	143-215.58
	1023	143-215.69
	1024	143-215.98
	1025	143-215.102
	1026,	143-215.114B
	1027	
	1028	143-318.17
	1029	143-340
	1030	143-341
	1031	143-345.1
	1032	143-345.2
	1033	143-354
	1034	143-355
	1035	143-469
	1036	143-547
	1037	143B-74.3
	1038	143B-181.20
	1039	143B-181.25
	1040	143B-450.1
	1041	143B-461
	1042	143B-472.3
	1043	143B-472.6
	1044	143B-472.10
	1045	143B-472.11
	1046	143B-472.12
	1047	143B-472.13
	1048	143B-472.15
	1049	143B-472.19
	1050	143B-499.6
	1051	146-13
	1052	146-43
	1053	147-9
	1054	147-33.3
	1055	147-76
	1056	147-79
	1057	147-80
	1058	148-45
	1059,	153A-98
	1060	
	1061	153A-224
	1062	153A-225
	1063	153A-334
	1064	153A-356
	1065	153A-357
	1066	153A-361
	1067	153A-363
	1068	153A-367
	1069	153A-371
	1070	156-19
	1071	156-24
539	1072	156-25
	1073	156-32
	1074	156-33
	1075	156-92
	1076	156-111
	1077	156-112
	1078	156-114
	1079	156-132
	1080	157-29.1
	1081	159-34
	1082	159-181
	1083	160A-80
	1084,	160A-168
	1085	
	1086	160A-308
	1087	160A-375
	1088	160A-388
	1089	160A-416
	1090	160A-417
	1091	160A-421
	1092	160A-423
	1093	160A-427
	1094	160A-431
	1095	160A-443
	1096	161-22
	1097	161-27
	1098	162-55
	1099	163-152
	1100	163-155
	1101	163-171
	1102	163-173
	1103	163-177
	1104	163-221
	1105	163-236
	1106	163-237
	1107	163-269
	1108	163-270
	1109	163-271
	1110	163-272.1
	1111	163-273
	1112	163-274
	1113	163-278.13
	1114	163-278.13A
	1115,	163-278.19
	1116	
	1117	163-278.20
	1118	163-278.27
	1119	163-278.44
	1120	168-4.5
	1121	10A-12
	1122	14-8
	1123	14-13
	1124	14-14
	1125	14-16.6
	1126	14-16.7
	1127	14-17
	1128	14-18
	1129	14-20
	1130	14-27.3
	1131	14-27.5

Ch.	Sec.	1993 General Statutes	Ch.	Sec.	1993 General Statutes
539	1132	14-27.7	539	1192	14-178
	1133	14-28		1192.1	14-67.1
	1134	14-29		1193	14-183
	1135	14-30		1194	14-190.1
	1136	14-30.1		1195	14-190.8
	1137	14-31		1196	14-190.16
	1138	14-32		1197	14-190.17
	1139	14-32.1		1198	14-190.17A
	1140	14-32.2		1199	14-190.18
	1141	14-34.1		1200	14-190.19
	1142	14-34.2		1201	14-202.1
	1143	14-39		1202	14-209
	1144	14-41		1203	14-210
	1145	14-43		1204	14-211
	1146	14-43.2		1205	14-212
	1147	14-43.3		1206,	14-217
	1148	14-46		1207	
	1149	14-49		1208	14-218
	1150	14-49.1		1209	14-220
	1151	14-52		1210	14-221
	1152	14-55		1211	14-225.2
	1153	14-56.1		1212	14-226
	1154	14-56.3		1213	14-228
	1155	14-57		1214	14-233
	1156	14-58		1215	14-253
	1157	14-59		1216	14-254
	1158	14-60		1217	14-256
	1159	14-61		1218	14-258
	1160	14-62		1219	14-258.2
	1161	14-62.1		1220	14-258.3
	1162	14-69.1		1221	14-278
	1163	14-70		1222	14-280
	1164	14-71		1223	14-282
	1165	14-71.1		1224	14-284.2
	1166	14-72.2		1225,	14-288.2
	1167	14-75		1226	
	1168	14-78		1227	14-288.6
	1169	14-79		1228	14-288.8
	1170	14-80		1229	14-288.9
	1171	14-81		1230	14-288.20
	1172	14-85		1231	14-309.5
	1173	14-87		1232	14-309.14
	1174	14-87.1		1233	14-318.4
	1175	14-88		1234	14-320.1
	1176	14-89.1		1235	14-329
	1177	14-92		1236	14-362.1
	1178	14-93		1237	14-367
	1179	14-97		1238	14-373
	1180	14-99		1239	14-374
	1181	14-101		1240	14-377
	1182	14-107		1241	14-399
	1183	14-113.17		1242	14-401.11
	1184	14-118.4		1243	14-409
	1185	14-120		1244	14-409.9
	1186	14-121		1245	14-415.1
	1187	14-122		1246	14-437
	1188	14-136		1247	20-30
	1189	14-159.1		1248	15A-543
	1190	14-159.2		1249	20-31
	1191	14-177		1250	20-34.1 note

Ch.	Sec.	1993 General Statutes
539	1251	20-71
	1252	20-106
	1253	20-106.1
	1254	20-106.2
	1255	20-109
	1256	20-112
	1257	20-136
	1258	20-138.5
	1259	20-141.4
	1260	20-166
	1261	20-279.31
	1262	20-350
	1263	23-43
	1264	48-37
	1265	53-124
	1266	53-129
	1267	53-130
	1268	53-131
	1269	53-132
	1270	58-7-50
	1271, 1272	58-19-50
	1273	58-24-180
	1274	58-50-40
	1275	58-70-1
	1276	58-71-165
	1277	62-273
	1278	63-25
	1279	63-27
	1280	63-28
	1281	65-71
	1282	66-135
	1283	66-225
	1284	75-12
	1285	75A-18
	1286	75D-7
	1287	76-40
	1288	78C-78
	1289	93A-58
	1290	95-197
	1291	105-113.34
	1292, 1293	105-236
	1294	106-145.6
	1295	106-350
	1296	106-363
	1297	106-443
	1298	106-549.26
	1299	108A-53
	1300	108A-60
	1301	113-209
	1302	120-86
	1303-1305	130A-26.1
	1306	130A-431
	1307	133-31
	1308	136-13
	1309	136-14
	1310	143-54
	1311	143-63
539	1312	143-214.2A
	1313-1315	143-215.6B
	1316, 1317	143-215.88B
	1318-1320	143-215.114B
	1321, 1322	148-45
	1323	148-46.1
	1324	163-237
	1325	163-278.53
	1358.1	90-95
	1358.2	14-42 Repealed, 14-67 note
	1359	1-324.5 note, 1-531 note, 1-596 note, 7A-112 note, 7A-602 note, 10A-12 note, 14-4 note, 14-8 note, 14-10 note, 14-12 note, 14-12.15 note, 14-13 to 14-32.2 note, 14-33 to 14-34.3 note, 14-35, 14-36 note, 14-39 to 14-43.3 note, 14-46, 14-47 note, 14-49 note, 14-49.1 note, 14-52 note, 14-54 note, 14-55 note, 14-56.1 to 14-56.3 note, 14-57 to 14-62.1 note, 14-67 to 14-72.2 note, 14-75 to 14-81 note, 14-85 note, 14-87, 14-88 note, 14-89.1 note, 14-92, 14-93 note, 14-97 note, 14-99 note, 14-101 to 14-110 note, 14-111.1 to 14-113 note, 14-113.6 note, 14-113.17 to 14-117 note, 14-117.2 to 14-118.5 note, 14-120 to 14-122.1 note, 14-127, 14-128 note, 14-129 to 14-132 note, 14-132.2, 14-133 note, 14-134.2 to 14-137 note, 14-140 to 14-142 note, 14-144 to 14-148 note, 14-151 to 14-159.2 note, 14-159.6 note, 14-159.8 note, 14-159.12 note, 14-159.13 note, 14-159.21, 14-159.22 note, 14-160 note, 14-160.1 note, 14-162 note, 14-163.1 note, 14-165 to 14-168.1 note, 14-168.4 note, 14-169 note, 14-175 to 14-179 note, 14-183, 14-184

Ch.	Sec.	1993 General Statutes
539	1359	note, 14-186 note, 14-188 note, 14-190.1 note, 14-190.4, 14-190.5 note, 14-190.8, 14-190.9 note, 14-190.14 to 14-190.17 note, 14-195 to 14-197 note, 14-199 note, 14-202 note, 14-202.1 note, 14-202.12 note, 14-204.1 note, 14-208 to 14-212 note, 14-217, 14-218 note, 14-220 to 14-223 note, 14-225 to 14-225.2 note, 14-226, 14-226.1 note, 14-227 note, 14-227.3 note, 14-228 note, 14-230 to 14-234.1 note, 14-236 to 14-239 note, 14-241 to 14-244 note, 14-246 note, 14-251 note, 14-253 to 14-256 note, 14-258 to 14-258.3 note, 14-259 note, 14-268, 14-269 note, 14-269.2 to 14-269.4 note, 14-269.6 note, 14-275.1 note, 14-276.1 note, 14-277 to 14-277.3 note, 14-278 to 14-284.2 note, 14-286 to 14-288 note, 14-288.2 note, 14-288.4 to 14-288.9 note, 14-288.12 to 14-288.15 note, 14-288.19 note, 14-288.20 note, 14-289 to 14-295 note, 14-297 note, 14-300 note, 14-303 note, 14-309 note, 14-309.5 note, 14-309.11 note, 14-309.14 note, 14-309.15 note, 14-313 note, 14-315 to 14-318.2 note, 14-318.4 note, 14-320.1 note, 14-321, 14-322 note, 14-326.1 note, 14-329 note, 14-342 to 14-344 note, 14-346 note, 14-353 note, 14-355, 14-356 note, 14-358 to 14-363.1 note, 14-366 to 14-368 note, 14-370 to 14-374 note, 14-377 note, 14-380.1, 14-380.2 note, 14-381 to 14-385 note, 14-389 note, 14-391 note, 14-394 to 14-399 note, 14-399.2 note, 14-400 to 14-401.14 note, 14-402 note, 14-408 to 14-409.1 note, 14-409.8, 14-409.9 note, 14-415, 14-415.1 note, 14-422 note, 14-424 note, 14-437 note, 14-444 note, 14-454 to 14-456 note, 15-76 note, 15A-261 note, 15A-343 note, 15A-502 note, 15A-541 to 15A-543 note, 15A-731 note, 15B-7 note, 16-4, 16-5 note, 17-25 note, 17-27, 17-28 note, 17D-4 note, 18B-102 note, 18B-302 note, 18B-401 note, 18B-502 note, 19A-13 note, 19A-33, 19A-34 note, 19A-36 note, 19A-48 note, 20-11 note, 20-28 to 20-31 note, 20-34.1 note, 20-35 note, 20-37.7, 20-37.8 note, 20-37.21 note, 20-39 note, 20-45 note, 20-47 note, 20-52.1 note, 20-59 note, 20-63 note, 20-71 note, 20-71.4 note, 20-72 to 20-77 note, 20-79 note, 20-94 note, 20-96 note, 20-102.1 note, 20-106 to 20-106.2 note, 20-107 to 20-109.1 note, 20-111, 20-112 note, 20-115.1 note, 20-116 note, 20-118.1 note, 20-119, 20-120 note, 20-124 note, 20-127 note, 20-130.1 note, 20-136 note, 20-137.2 note, 20-138.2, 20-138.3 note, 20-138.5 note, 20-140, 20-141 note, 20-141.3, 20-141.4 note, 20-157 note, 20-166, 20-166.1 note, 20-167.1 note, 20-176 note, 20-183.11 note, 20-215.4 note, 20-217 note, 20-219.2 note, 20-279.31 note, 20-284 note, 20-308 note, 20-312 to 20-313.1 note, 20-327 note, 20-350

Ch.	Sec.	1993 General Statutes
539	1359	note, 20-371 note, 20-390 note, 20-395 to 20-397 note, 23-9 note, 23-12 note, 23-43 note, 23-47 note, 24-17 note, 34-13 note, 42-11 note, 42-13 note, 42-22, 42-22.1 note, 44A-24 note, 44A-32 note, 47-32.2 note, 47-112 note, 48-3 note, 48-25 note, 48-37, 48-38 note, 49-2 note, 51-7 note, 51-13 note, 51-15 note, 53-63 note, 53-86 note, 53-124 to 53-132 note, 53-134 note, 53-166 note, 53-208 note, 53-247 note, 54-109.5 note, 54-109.105 note, 54-157 note, 54B-56 note, 54B-66 note, 54B-78 note, 54C-54 note, 54C-64 note, 54C-79 note, 55-1-29 note, 55-1-32 note, 55A-80 note, 58-1-25 note, 58-1-30 note, 58-1-35 note, 58-2-200 note, 58-3-60 note, 58-3-85 note, 58-3-130 note, 58-7-50 note, 58-16-20 note, 58-19-50 note, 58-21-105 note, 58-24-180 note, 58-25-70 note, 58-27-5 note, 58-27-45 note, 58-30-12 note, 58-31-60 note, 58-33-95 to 58-33-120 note, 58-35-30 note, 58-35-90 note, 58-39-115 note, 58-43-35 note, 58-50-40 note, 58-50-70 note, 58-57-80 note, 58-64-75 note, 58-67-165 note, 58-69-35 note, 58-70-1 note, 58-71-165 note, 58-71-185 note, 58-81-5 note, 58-81-10 note, 58-82-1 note, 62-144 note, 62-150 note, 62-221 note, 62-224 note, 62-226 note, 62-229 note, 62-273 note, 62-313 note, 62-318 to 62-320 note, 62-322, 62-323 note, 62-325 to 62-327 note, 62A-12 note, 63-18 note, 63-23 note, 63-25 to 63-28
539	1359	note, 63-35 note, 63A-7 note, 65-57 note, 65-71, 65-72 note, 66-4 note, 66-10 to 66-11.1 note, 66-16 note, 66-22 note, 66-27 note, 66-27.3 note, 66-27.5 note, 66-34 note, 66-58 note, 66-64 note, 66-66 note, 66-67.2 note, 66-71 note, 66-75 note, 66-81 note, 66-86 note, 66-97 note, 66-108, 66-109 note, 66-135 note, 66-145 note, 66-167 note, 66-169 note, 66-172, 66-173 note, 66-225 note, 67-2 to 67-4.3 note, 67-12 note, 67-16 note, 68-16 note, 68-21, 68-22 note, 68-24, 68-25 note, 68-44 note, 70-4 note, 70-40 note, 72-7.1 note, 72-30 note, 72-37, 72-38 note, 72-43, 72-44 note, 72-51 note, 73-4 note, 74-24.14 note, 74-30 note, 74-64 note, 74-87 note, 74C-17 note, 74D-11 note, 75-6 note, 75-12 note, 75-28 note, 75-30 note, 75A-5, 75A-5.1 note, 75A-18 note, 75A-47, 75A-48 note, 75D-6, 75D-7 note, 76-40 to 76-43 note, 76-47 note, 76-57, 76-58 note, 76A-16 note, 76A-46 note, 77-7 note, 77-12 to 77-14 note, 77-37 note, 78C-78 note, 80-20 note, 80-22, 80-23 note, 80-40 to 80-44 note, 80-66 note, 81A-29 note, 81A-80 note, 83A-16 note, 84-2 note, 84-8 note, 84-10 note, 84-38 note, 85B-9 note, 86A-20 note, 87-13, 87-14 note, 87-25 note, 87-42 note, 87-48 note, 87-61 note, 88-28 note, 88A-4 note, 89A-8 note, 89B-15 note, 89C-23 note, 89E-22 note, 90-12 note, 90-18 note, 90-27 note, 90-

Ch.	Sec.	1993 General Statutes
539	1359	29.2 note, 90-40 note, 90-48 note, 90-85.40 note, 90-95 note, 90-108 note, 90-113.13 note, 90-113.22 to 90-113.24 note, 90-117.4 note, 90-118.11 note, 90-124 note, 90-136 note, 90-147 note, 90-171.45 note, 90-178.7 note, 90-187.6 note, 90-187.12 note, 90-202.3 note, 90-210.25 note, 90-210.43 note, 90-210.50 note, 90-220.12 note, 90-233.1 note, 90-251, 90-252 note, 90-255.1 note, 90-270.17 note, 90-270.35 note, 90-270.79 note, 90-288 note, 90-306 note, 90-341 note, 90-366 note, 90A-66 note, 90B-12 note, 91A-11 note, 93-13 note, 93A-8 note, 93A-56 note, 93A-58 note, 93A-81 note, 93D-15 note, 95-25.21 note, 95-28 note, 95-47.9 note, 95-50 note, 95-69.18 note, 95-75 note, 95-99 note, 95-104 note, 95-110.11 note, 95-124 note, 95-139 note, 95-194 note, 95-197 note, 96-15.2 note, 96-18 note, 97-21 note, 97-60 note, 97-76 note, 97-90 note, 97-94 note, 97-100 note, 102-4 note, 103-2 note, 104E-23 note, 104E-29 note, 104F-3 note, 105-33 note, 105-50 note, 105-53 note, 105-77 note, 105-86 note, 105-88 note, 105-90 note, 105-99 note, 105-109 note, 105-113.33, 105-113.34 note, 105-113.73 note, 105-113.112 note, 105-163.44 note, 105-164.9 note, 105-164.29 note, 105-228.34 note, 105-233, 105-234 note, 105-236 note, 105-249 note, 105-259 note, 105-290, 105-291 note, 105-296 note, 105-308 note, 105-310 note, 105-316.6 note, 105-322 note, 105-334 note, 105-352 note, 105-359 note, 105-368, 105-369 note, 105-373 note, 105-440, 105-441 note, 105-444 note, 105-447 note, 105-449 note, 105-449.34 note, 105-449.41 note, 105-449.51 note, 105-449A note, 106-9.2 note, 106-22 note, 106-50.41 note, 106-65.33 note, 106-65.48 note, 106-65.78 note, 106-92.14 note, 106-124 note, 106-145.6 note, 106-168.15 note, 106-189.2 note, 106-196, 106-197 note, 106-202.19 note, 106-245.24 note, 106-245.38 note, 106-255 note, 106-266 note, 106-266.4 note, 106-267.4 note, 106-268.1 note, 106-275 note, 106-277.24 note, 106-284.20 note, 106-284.44 note, 106-307 note, 106-307.6 note, 106-310 to 106-312 note, 106-314 note, 106-316.4 note, 106-321 note, 106-349 note, 106-350 note, 106-360 note, 106-362, 106-363 note, 106-397, 106-398 note, 106-404, 106-405 note, 106-405.9 note, 106-405.19 note, 106-411 note, 106-414 note, 106-417 note, 106-423.1 note, 106-439 note, 106-443 note, 106-451 note, 106-451.1 note, 106-451.28 note, 106-454, 106-455 note, 106-464, 106-465 note, 106-469 note, 106-501 note, 106-514, 106-515 note, 106-516.1 note, 106-518 note, 106-520.7 note, 106-549 note, 106-549.26 to 106-549.28 note, 106-549.34 note, 106-549.36 note, 106-549.68 note, 106-

Ch.	Sec.	1993 General Statutes
539	1359	579.11, 106-579.12 note, 106-614 note, 106-644 note, 106-668 note, 106-714 note, 106-776 note, 108A-39 note, 108A-53 note, 108A-57 note, 108A-60 note, 108A-64, 108A-65 note, 108A-80 note, 110-20.1 note, 110-48 note, 110-55 note, 110-103 note, 111-23 note, 112-32 note, 112-36 note, 113-25 note, 113-34, 113-35 note, 113-55 note, 113-58 note, 113-60.3 note, 113-60.29 note, 113-135 note, 113-137 note, 113-167 note, 113-187 note, 113-202 note, 113-207 to 113-209 note, 113-222 note, 113-229, 113-230 note, 113-262 note, 113-264 note, 113-266 note, 113-268, 113-269 note, 113-270.1 note, 113-273 note, 113-275 note, 113-276.2 note, 113-277 note, 113-286 note, 113-290.1 note, 113-291.1 note, 113-294, 113-295 note, 113-300.3 note, 113-303 note, 113-307.1 note, 113-315.9 note, 113-315.34 note, 113-380 note, 113-409 note, 113A-42 note, 113A-64 note, 113A-126 note, 113A-170 note, 113A-195 note, 113A-226 note, 113B-24 note, 115B-6 note, 115C-13 note, 115C-45 note, 115C-276 note, 115C-288 note,115C-307 note, 115C-317 note, 115C-323 note, 115C-379 note, 115C-380 note, 115C-383 note, 115C-447 note, 115C-525 note, 115C-534 note, 115D-96 note, 116-213 note, 116-235 note, 116B-28 note, 119-4 note, 119-13 note, 119-13.3 note, 119-16.2, 119-16.3 note, 119-25 note, 119-27 note, 119-32, 119-33 note, 119-35 note, 119-39 note, 119-41 note, 119-59 note, 120-32, 120-32.1 note, 120-47.9 note, 120-86 note, 121-4, 121-5 note, 121-28 note, 122C-25 note, 122C-28 note, 122C-52 note, 122C-65, 122C-66 note, 122C-158 note, 122C-192 note, 122C-406 note, 124-3 note, 125-11 note, 126-13 to 126-14.1 note, 126-18 note, 126-27, 126-28 note, 127A-131 note, 127A-151, 127A-152 note, 127B-5 note, 127B-7 note, 127B-15 note, 128-4 note, 128-12 note, 128-28 note, 128-32 note, 130A-25 to 130A-26.1 note, 130A-55 note, 130A-65 note, 130A-196 note, 130A-304 note, 130A-431 note, 131C-72 note, 131D-2 note, 131D-6 note, 131D-10.7 note, 131D-13 note, 131E-80, 131E-81 note, 131E-90 note, 131E-109 note, 131E-141.1 note, 131E-151 note, 131E-154.8 note, 131E-161 note, 131E-207 note, 132-3 to 132-5 note, 133-4 note, 133-31, 133-32 note, 134A-25 note, 135-6 note, 135-10 note, 136-13, 136-14 note, 136-18 note, 136-18.4 note, 136-20 note,136-26 note, 136-32 to 136-32.2 note, 136-33 note, 136-72 note, 136-80 note, 136-89 note, 136-89.58 note, 136-90 to 136-94 note, 136-102 note, 136-102.4 note, 136-102.6 note, 136-125 note, 136-135 note, 136-145 note, 139-18 note, 139-27 note, 143-32 note, 143-34, note 143-54 note, 143-58.1 note, 143-63 note, 143-115 note, 143-116.6 note, 143-129, 143-129.1 note, 143-138

Ch.	Sec.	1993 General Statutes
539	1359	note, 143-143.24 note, 143-151 note, 143-151.18 note, 143-151.36 note, 143-152, 143-153 note, 143-214.2A note, 143-214.4 note,143-215.6B note, 143-215.17 note,143-215.36 note, 143-215.58 note, 143-215.69 note, 143-215.88B note, 143-215.98 note, 143-215.102 note, 143-215.114B note, 143-318.17 note, 143-340, 143-341 note, 143-345.1, 143-345.2 note, 143-354, 143-355 note, 143-469 note, 143-547 note, 143B-74.3 note, 143B-181.20 note, 143B-181.25 note, 143B-450.1 note, 143B-461 note, 143B-472.3 note, 143B-472.6 note, 143B-472.10 to 143B-472.13 note, 143B-472.15 note, 143B-472.19 note, 143B-499.6 note, 146-13 note, 146-43 note, 147-9 note, 147-33.3 note, 147-76 note, 147-79, 147-80 note, 148-45 note, 148-46.1 note, 153A-98 note, 153A-224, 153A-225 note, 153A-334 note, 153A-356 note, 153A-357 note, 153A-361 note, 153A-363 note, 153A-367 note, 153A-371 note, 156-19 note, 156-24, 156-25 note, 156-32, 156-33 note, 156-92 note, 156-111, 156-112 note, 156-114 note, 156-132 note, 157-29.1 note, 159-34 note, 159-181 note, 160A-80 note, 160A-168 note, 160A-308 note, 160A-375 note, 160A-388 note, 160A-416, 160A-417 note, 160A-421 note, 160A-423 note, 160A-427 note, 160A-431 note, 160A-443 note, 161-22 note, 161-27 note, 162-55 note, 163-152 note, 163-155 note, 163-171 note, 163-173 note, 163-177 note, 163-221 note, 163-236, 163-237 note, 163-269 to 163-274 note, 163-278.13 note, 163-278.13A note, 163-278.19, 163-278.20 note, 163-278.27 note, 163-278.44 note, 163-278.53 note, 168-4.5 note
540	1	1-538.1
541	1	116B-11
	2	116B-12
	3	116B-13
	4	116B-22
	5	116B-28
	6	116B-29
	7	116B-31
	8	116B-34
	9	66-67.3
542	1	113-29 note, 113-44.7 note, 115D-1 note, 115D-31 note, 116-1 note, 159G-1 note
	2-4	113-29 note, 113-44.7 note, 115D-31 note, 116-1 note, 159G-1 note
	5(a)	116-1 note
	(b)	115D-31 note
	(c)	159G-1 note
	(d)	113-29 note
	6(a)	116-11 note
	(b)	115D-31 note
	(c)	159G-1 note
	(d)	113-29 note, 113-44.7 note
	7-9	113-29 note, 113-44.7 note, 115D-31 note, 116-1 note, 159G-1 note
	10	159G-1 note
	11(a)	115D-31 note
	(b)	113-29 note, 113-44.7 note
	12(a)	159G-4
	(b)	159G-6
	13	142-29.5
543	1	20-88
	2	20-79.4
	3	20-79.7
	4	105-330.1
	5	20-81.12
	6	105-269.5
	7	143-247.2

Ch.	Sec.	1993 General Statutes
543	8	20-79.4 note
544	1	158-30 to 158-42
	2	63A-1 note
545	1-5	132-1 L.M.
546	1	160A-218 L.M.
547	1	135-40.4
548	1	105-187.16
	2	105-187.19
	3	130A-309.12
	4	130A-309.58
	5	130A-309.61
	6	130A-309.63
	7	130A-309.63 note
	8	105-187.19
	9	105-187.16 note, 130A-309.63 note
549	2	115C-40 L.M., 115C-521 L.M.
550	1-5	134A-1 note
	6	113A-1 note, 113A-50 note
	7	134A-1 note
	9	134A-1 note
	11	134A-1 note
551	1	143B-216.32
552	1	55-1-23
	2	55-1-25
	3	55-1-32
	4	55-1-40
	5	55-1-41
	6	55-2-02
	7	55-4-04
	8	55-6-30
	9	55-7-20
	10	55-8-06
	11	55-8-30
	12	55-8-50
	13	55-8-03
	14	55-11-03
	15	55-14-20
	16	55-15-01
	17	55-15-08
	18	55-15-30
	19	55-16-02
	20	54-139
553	1	7A-37 Repealed
	2	36A-52
	3	120-47.8
	4	143-170.5
	5	143-299.3
	6	1-567.41
	7	7A-38
	8	14-108
	9	14-129
	10	20-279.24
	11	20-347
	12	22B-1
	13	44A-23
	14	48-36
	15	54-67

Ch.	Sec.	1993 General Statutes
553	16	58-19-15
	17	58-51-15
	19	58-54-1
	20	58-55-30
	21	58-60-15
	22	58-70-15
	23	63A-11
	24	65-43
	25	75E-1
	26	87-10
	27	90-210.60
	28	90-321
	29	90-322
	29.1	93A-32
	30	96-8
	31	108A-14
	32	110-91
	32.1	113-270.4
	32.2	115D-87
	33	116-40.2
	34	120-2
	35	120-112
	36	122C-146
	37, 38	122D-6
	39, 40	126-5
	40.1	130A-14
	41	130A-295.02
	42	131A-2
	43	131C-11
	44	131D-3
	45	131D-4
	46	143B-153
	47	143B-399
	48, 49	143B-472.3
	50, 51	143B-472.35
	52	146-15
	52.1	146-26.1
	52.2	146-30
	52.3	146-65
	53	147-45
	54	150B-21.1
	55	159-30
	56	159G-8
	57	159I-29
	58, 59	160A-443
	60	163-112
	61	163-138
	62, 63	163-140
	64	163-170
	65	163-192
	66	163-201
	67	163-230.1
	67.1	50-13.9
	68	163-275
	69	163-278.19
	70	163-278.42
	71	18B-1114.1 note
	73(a)	7A-210
	(b)	7A-219
	(c)	42-28

		1993
Ch.	**Sec.**	**General Statutes**
553	73(d)	42-30
	74	130A-309.14
	75	58-57-15
	77	20-37.7
	78	8-53.3
	79	113-154.1
	80	143-215.31
	80.1	105-163.013
	81	143-215.22H
	82	153A-330 L.M.
	83(a)	55A-11-02
	(b)	55A-15-32
554	1	58-50-30
558	1	14-269.2
	2	14-315.1, 14-315.2
561	10	143-613
	12	143B-434
	13	143B-168.10 note
	15	120-70.91
	16	143-15.3A
	17(a)	158-8.1
	(b)	158-8.2
	(c)	158-8.3
	18(a)	126-8
	20	143-16.3 note
	21	120-36.7
	22	143-15.3A note
	23(a), (b)	105-116 note
	(c)-(e)	105-113.82 note
	26(a)	143-23.2 note
	28	143-16.3 note
	29	143-135.26 note
	32(a)	146-27
	(b)	146-74
	(c)	146-29.1
	(d), (e)	66-58 note
	38	100-8 note
	39	58-2-1 note
	41(a)	147-54.16
	(b), (c)	147-54.16 note
	42	115C-341.1, 115C-441.1, 115D-25.1, 115D-25.2, 116-17.1, 116-17.2, 143-34.1
	50(a)	115D-39
	52(a), (b)	115C-1 note
	53	115C-302 L.M., 115C-316 L.M.
	54	115C-238.4
	55	115C-81 note
	56(a)	115C-238.4
561	58(a)-(c)	115C-1 note
	61	115C-21 note
	63(a)	143-3.3
	(b)	143-3.3 note
	64	136-27.1 note
	65	136-28.10, 136-28.4 note
	68	136-12 note
	70	143-341 note
	71	120-70.50 note
	72	143-31.4 note, 158-41 note, 158-42 note
	74	162-39 note
	76	148-70 note
	79(a)	7A-344
	(b)	7A-344 note
	83	53-96
	86(a)	122C-344
	87	7A-574 note
	88	131E-182 note
	89(a)	143B-157
	(b)	143B-158
	91(a), (b)	114-2.1 note
	95(a)	106-435
	(b), (c)	106-435 note
	97	122D-1 note
	102(a), (b)	143B-437A note
	104.1(a) (b)	143B-437A note
	104.1(c)-(d)	105-130.40 note, 105-151.7 note
	105	143-215.74 note
	106	104G-19 note
	109	130A-152 note
	111(a)-(c)	113-291.6 note
	115	146-74 note
	116(a)	143B-344.18 note
	(b)	143-370 to 143-373 recodified as 143B-344.18 to 143B-344.21
	(c)	143A-66 Repealed
	(d)	106-22
	(e)	143B-279.2
	(f)	143B-344.18 to 143B-344.21
	(g)	14-419
	(h)	14-420
	(i)	106-202.17
	(j)	147-50
563	13	120-122

SESSION LAWS OF 1994, Ex. Sess.

		1994 (Ex. Sess.)
Ch.	**Sec.**	**General Statutes**
1	1	7A-60 note
	2	7A-133 note
	2.1	7A-41 note
	3	7A-41 note
	4(a)	7A-41 note, 7A-60 note, 7A-133, 163-107.1 note
	(b)	7A-41 note, 7A-60 note, 7A-133, 163-226 note, 163-245 note
	5	7A-41 note, 7A-60 note, 7A-133 note, 163-107 note
	6	7A-41 note, 7A-60 note, 7A-133 note, 163-107 note, 163-107.1 note, 163-226 note, 163-245 note
2	1	15A-932
3	1	15B-11
4	1	50B-2
	2	50B-3
	3	50B-4
	4	7A-292
5	1	20-135.2A
6	1, 2	7A-133 note
7	1	7A-675
	2	7A-676
	3	8C-1-404
	4	15A-1340.4
	5	15A-2000
	6	15A-1340.16
8	1	15A-615
9	1	15A-1343
10	1-3	96-9
11	1	90-95
	1.1	90-96
12	1, 2	148-59
13	1	14-415.3
14	1	7A-273
	2	14-3
	3	14-33
	3.1	14-72.3
	3.2	14-72.4
	3.3	14-82
	4(a)	14-269.2 note
	(b)	14-269.2
	5	14-269.7
	6	14-277.4
	7	14-288.14
	8(a)	14-303 note
	(b)	14-303
	9(a)	14-309 note
	(b)	14-309
	10	14-311
	11	14-315.1
	12	14-315.2
	13	14-318.2
14	14(a)	14-401.14 note
	(b)	14-401.14
	15	15A-266.11
	16(a)	15A-543 note
	(b)	15A-543
	17	15A-1340.11
	18-19	15A-1340.13
	20, 21	15A-1340.17
	22	15A-1343.2
	23	15A-1354
	24, 25	15A-1368
	26	15A-1368.1
	27	15A-1368.3
	28	15A-1445
	29	18B-102
	30(a)	20-34.1 note
	(b)	20-34.1
	31	20-37.6
	32	20-138.5
	33	20-310
	34	23-9
	35	49-8
	36	55A-1-29
	37	55A-1-32
	38	57C-1-29
	39	57C-1-32
	40(a)	66-11 note
	(b), (c)	66-11
	41, 42	72-7.1
	43	75-28
	44	75A-6.1
	45	76A-46
	46, 47	90-95
	48	90-452
	49	93E-1-13
	50	105-163.013
	51(a)	105-259 note
	(b)	105-259
	52	105-449.34
	53(a)	106-451 note
	(b)	106-451
	54(a)	106-451.1 note
	(b)	106-451.1
	55	106-549.68
	56	106-764
	57	113-154.1
	58	113-156
	59	115C-290.3
	60	136-20
	61	143-34
	62	143-153
	63	143B-267
	64	148-4.1
	65	148-32.1
	66	153A-148.1
	67	160A-208.1

		1994 (Ex. Sess.)
Ch.	**Sec.**	**General Statutes**
14	68	160A-308
	69, 70	162A-6.1
	71(1)	14-9 Repealed
	(2)	14-18.1 Repealed
	(3)	14-27.6 Repealed
	(4)	14-50 Repealed
	(5)	14-89 Repealed
	(6)	14-95 Repealed
	71(7)	14-212 Repealed
	72(1)	14-78.1 Repealed
	(2)	14-80 Repealed
	(3)	14-86 Repealed
	(4)	14-111 Repealed
	(5)	14-117.1 Repealed
	(6)	14-138 Repealed
	(7)	14-161 Repealed
	(8)	14-164 Repealed
	(9)	14-200 Repealed
	(10)	14-201 Repealed
	(11)	14-235 Repealed
	(12)	14-257 Repealed
	(13)	14-270 Repealed
	(14)	14-271 Repealed
	(15)	14-285 Repealed
	(16)	14-345 Repealed
	(17)	14-346.1 Repealed
	(18)	14-346.2 Repealed
	(19)	14-357 Repealed
	(20)	14-369 Repealed
	(21)	14-386 Repealed
15	1-4	148-4.1
16	1	15-11.1
	2	14-269.1
17	1	7A-572
18	1	8-50.2
	2	17C-6
19	1	5A-11
	2	15A-1344
	3	15A-1343.2
20	1	15A-1331A
	2	20-15.1
	3	20-179.3
	4	113-277
	5	15A-1331A
21	1	14-17
	2	15A-1370.1
	3	15A-1371
	4	15A-1372
	5	15A-2002
	6	143B-266
	7	15A-1380.5
22	1	7A-601 note, 7A-608 to 7A-610, note 14-2.5 note, 14-2.4 note, 14-2.6 note, 14-2.2 note, 14-5.2 note, 14-7.6 to 14-7.12 note, 14-17 note, 14-20 note,
22	1	14-27.2 note, 14-27.4 note, 14-269.1 note, 15A-1340.4 note, 15A-1340.10 note, 15A-1340.17 note, 15A-1340.13 note, 15A-1340.14 note, 15A-1340.16 note, 15A-1340.16A note, 15A-1368.1 note, 15A-1370.1 note
	2	14-27.2
	3	14-27.4
	4	14-17
	5	14-20
	6	14-5.2
	7	15A-1340.17
	8	15A-1368.1
	9	15A-1340.13
	10	15A-1340.14
	11	14-2.5
	12	14-2.4
	13	14-2.6
	15, 16	14-7.6
	18-19(b)	14-2.2
	(c)	14-2.2 note
	20	15A-1340.16A
	21	15A-1340.4
	22	15A-1340.16
	23	14-269.1
	25	7A-608
	26	7A-609
	27	7A-610
	28	7A-601
	31	14-7.7, 14-7.8, 14-7.9 to 14-7.12
	32	14-7.7
	33, 34	15A-1370.1
	35	15A-1340.10
	36	15A-1380.5 note
23	1-3	14-225
24	3	7A-289.13 note, 15A-1340.10 note, 115C-238.40 note, 120-70.93 note, 143-23 note, 143B-152.1 note, 143B-152.10 note, 148-37 note
	(a)-(c)	143-23
	(d), (e)	143-23 note
	14(a)	15A-1340.10
	(b)	7A-273, 14-1.1, 14-2 to 14-2.2, 14-2.4 to 14-2.6, 14-3, 14-4, 14-7.6, 15A-1022, 5A-1301, 15A-1331, 15A-1332, 15A-1340.1 to 15A-1340.7,

		1994 (Ex. Sess.)
Ch.	**Sec.**	**General Statutes**
24	14(b)	15A-1340.10 to 15A-1340.23, 15A-1341, 15A-1343, 15A-1343.1, 15A-1343.2, 15A-1344, 15A-1351, 15A-1352, 15A-1355, 15A-1368, 15A-1368.1 to 15A-1368.6, 15A-1370.1, 15A-1371, 15A-1372, 15A-1373, 15A-1374, 15A-1376, 15A-1380.1, 15A-1380.2, 15A-1415, 15A-1442, 15A-1444, 15A-1445, 15A-2002, 90-95, 143B-264, 143B-266, 143B-267, 148-52.1, 148-53, 148-54, 148-56 to 148-57.1, 148-59, 148-60.1, 148-62.1 to 148-64, 148-65.3, 162-60
	14(c)	1-324.5, 1-531, 7A-112, 7A-602, 10A-12, 14-8, 14-12, 14-12.15, 14-13 to 14-16, 14-16.6, 14-16.7, 14-17, 14-18, 14-20, 14-27.3, 14-27.5, 14-27.7, 14-28 to 14-33, 14-34 to 14-34.3, 14-35, 14-36, 14-40 to 14-43.3, 14-46, 14-47, 14-49, 14-49.1, 14-52, 14-54, 14-55, 14-56.1 to 14-56.3, 14-62.1, 14-67.1 to 14-72.2, 14-75 to 14-81, 14-85, 14-87, 14-88, 14-89, 14-92, 14-93, 14-97, 14-99, 14-101 to 14-113, 14-113.6, 14-113.17, 14-114 to 14-117, 14-117.2, 14-118 to 14-118.5, 14-120 to 14-122, 14-127 to 14-132, 14-132.2, 14-133, 14-134.2 to 14-137, 14-140 to 14-142, 14-144 to 14-148, 14-151 to 14-159.2, 14-159.6, 14-159.8, 14-159.12, 14-159.13, 14-159.21, 14-159.22, 14-160, 14-160.1, 14-162, 14-163.1, 14-165 to 14-168.1, 14-168.4, 14-169, 14-175 to 14-179, 14-183, 14-184, 14-186, 14-188, 14-190.1, 14-190.4, 14-190.5, 14-190.8, 14-190.9, 14-190.14 to 14-190.19, 14-195 to 14-197, 14-199, 14-202, 14-202.1, 14-202.12, 14-204.1, 14-208 to 14-212, 14-217, 14-218, 14-220 to 14-222, 14-223, 14-225 to 14-227, 14-227.3 14-228, 14-230 to 14-234.1, 14-236 to 14-239, 14-241 to 14-244, 14-246, 14-251, 14-253 to 14-256, 14-258 to 14-259, 14-268, 14-269, 14-269.2 to 14-269.4, 14-269.6, 14-275.1, 14-276.1, 14-277 to 14-277.3, 14-278 to 14-284.2, 14-286 to 14-288, 14-288.2, 14-288.4 to 14-288.9, 14-288.12 to 14-288.15, 14-288.19, 14-288.20, 14-289, 14-290 to 14-295, 14-297, 14-300, 14-303, 14-309, 14-309.5, 14-309.11, 14-309.14, 14-309.15, 14-313, 14-315 to 14-318.2, 14-318.4, 14-320.1, 14-321, 14-322, 14-326.1, 14-329, 14-342 to 14-344, 14-346, 14-253, 14-355, 14-356, 14-358 to 14-363.1, 14-366 to 14-368, 14-370 to 14-374, 14-377, 14-380.1 to 14-385, 14-389, 14-391, 14-394 to 14-399, 14-399.2, 14-400 to 14-401.14, 14-402, 14-408 to 14-409.1, 14-409.8, 14-409.9, 14-415, 14-415.1, 14-422, 14-424, 14-437, 14-444, 14-454 to 14-456 15-176, 15A-343, 15A-543, 15A-261, 15A-502, 15A-541, 15A-542, 15A-731, 15B-7, 16-4, 16-5, 17-25, 17-27, 17-28, 17D-4, 18B-102, 18B-302, 18B-401, 18B-502, 19A-13, 19A-33,

		1994 (Ex. Sess.)
Ch.	**Sec.**	**General Statutes**
24	14(c)	19A-34, 19A-36, 19A-48, 20-11, 20-28 to 20-31, 20-34.1, 20-35, 20-37.7, 20-37.8, 20-37.21, 20-39, 20-45, 20-47, 20-52.1, 20-59, 20-63, 20-71, 20-71.4, 20-72 to 20-75, 20-77, 20-79, 20-94, 20-96, 20-102.1, 20-106 to 20-109.1, 20-111, 20-112, 20-115.1, 20-116, 20-118.1 to 20-120, 20-124, 20-127, 20-130.1, 20-136, 20-137.2, 20-138.2, 20-138.3, 20-138.5, 20-140, 20-141, 20-141.3, 20-141.4, 20-157, 20-166, 20-166.1, 20-167.1, 20-176, 20-183.11, 20-215.4, 20-217, 20-219.2, 20-279.31, 20-284, 20-308, 20-312, 20-313, 20-313.1, 20-327, 20-350, 20-371, 20-390, 20-395 to 20-397, 23-9, 23-12, 23-43, 23-47, 24-17, 34-13, 42-11, 42-13, 42-22, 42-22.1, 44A-24, 44A-32, 47-32.2, 47-112, 48-3, 48-25, 48-37, 48-38, 49-2, 51-7, 51-13, 51-15, 53-63, 53-86, 53-124 to 53-128, 53-130 to 53-132, 53-134, 53-166, 53-208, 53-247, 54-109.5, 54-109.105, 54-157, 54B-56, 54B-66, 54B-78, 54C-54, 54C-64, 54C-79, 55-1-29, 55-1-32, 55A-80, 58-1-25, 58-1-30, 58-1-35, 58-2-200, 58-3-60, 58-3-85, 58-3-130, 58-7-50, 58-16-20, 58-19-50, 58-21-105, 58-24-180, 58-25-70, 58-27-5, 58-28-45, 58-30-12, 58-31-60, 58-33-95, 58-33-100 to 58-33-120, 58-35-30, 58-35-90, 58-39-115, 58-43-35, 58-50-40, 58-50-70, 58-57-80, 58-64-75, 58-67-165, 58-69-35, 58-70-1, 58-71-165, 58-71-185, 58-81-5, 58-81-10, 58-82-1, 62-144, 62-150,
24	14(c)	62-221, 62-224, 62-226, 62-229, 62-273, 62-313, 62-318 to 62-320, 62-322, 62-323, 62-325 to 62-327, 62A-12, 63-18, 63-23, 63-25, 63-26.1, 63-27, 63-28, 63-35, 63A-7, 65-57, 65-71, 65-72, 66-4, 66-10 to 66-11.1, 66-16, 66-22, 66-27, 66-27.3, 66-27.5, 66-34, 66-58, 66-64, 66-66, 66-67.2, 66-71, 66-75, 66-81, 66-86, 66-97, 66-108, 66-109, 66-135, 66-145, 66-167, 66-169, 66-172, 66-173, 66-225, 67-2 to 67-4, 67-4.2, 67-4.3, 67-12, 67-16, 68-16, 68-21, 68-22, 68-24, 68-25, 68-44, 70-4, 70-40, 72-7.1, 72-30, 72-37, 72-38, 72-43, 72-44, 72-51, 73-4, 74-24.14, 74-30, 74-64, 74-87, 74C-17, 74D-11, 75-6, 75-12, 75-28, 75-30, 75A-5, 75A-5.1, 75A-18, 75A-47, 75A-48, 75D-6, 75D-7, 76-40 to 76-43, 76-47, 76-57, 76-58, 76A-16, 76A-46, 77-7, 77-12 to 77-14, 77-37, 78C-78, 80-20, 80-22, 80-23, 80-40 to 80-44, 80-66, 81A-29, 81A-80, 83A-16, 84-2, 84-8, 84-10, 84-38, 85B-9, 86A-20, 87-13, 87-14, 87-25, 87-42, 87-48, 87-61, 88-28, 88A-4, 89A-8, 89B-15, 89C-23, 89E-22, 90-12, 90-18, 90-27, 90-29.2, 90-40, 90-48, 90-85.40, 90-95, 90-108, 90-113.13, 90-113.22 to 90-113.24, 90-117.4, 90-118.11, 90-124, 90-136, 90-147, 90-171.45, 90-178.7, 90-187.6, 90-187.12, 90-202.3, 90-210.25, 90-210.43, 90-210.50, 90-220.12, 90-233.1, 90-251, 90-252, 90-255.1, 90-270.17, 90-270.35, 90-270.79, 90-288, 90-306, 90-341, 90-366, 90A-66, 90B-12, 91A-11, 93-13, 93A-8,

		1994 (Ex. Sess.)
Ch.	**Sec.**	**General Statutes**
24	14(c)	93A-56, 93A-58, 93A-81, 93D-15, 95-25.21,95-28, 95-47.9, 95-50, 95-69.18, 95-75, 95-99, 95-104, 95-110.11, 95-124, 95-139, 95-194, 95-197, 96-15.2, 96-18, 97-21, 97-60, 97-76, 97-90, 97-94, 97-100,102-4, 103-2, 104E-23, 104E-29, 104F-3, 105-33, 105-50, 105-53, 105-77, 105-86, 105-88, 105-90, 105-99, 105-109, 105-113.33, 105-113.73, 105-113.112, 105-163.44, 105-164.9, 105-164.29, 105-228.34, 105-233, 105-234, 105-249, 105-259 to 105-291, 105-296, 105-308, 105-310, 105-316.6, 105-322, 105-334, 105-352, 105-359, 105-368, 105-369, 105-373, 105-440, 105-441, 105-444, 105-447, 105-449, 105-449.34, 105-449.41, 105-449.51, 105-449A, 106-9.2, 106-22, 106-50.41, 106-65.33, 106-65.48, 106-65.78, 106-92.14, 106-124, 106-145.6, 106-168.15, 106-189.2, 106-196, 106-197, 106-202.19, 106-245.24, 106-245.38, 106-255, 106-266, 106-266.14, 106-267.4, 106-268.1, 106-275, 106-277.24, 106-284.20, 106-284.44, 106-307, 106-307.6, 106-310 to 106-312, 106-314, 106-316.4, 106-321, 106-349, 106-350, 106-360, 106-362, 106-363, 106-397, 106-398, 106-404, 106-405, 106-405.9, 106-405.19, 106-411, 106-414, 106-417, 106-423.1, 106-439, 106-443, 106-451, 106-451.1, 106-451.28, 106-454, 106-455, 106-464, 106-465, 106-469, 106-501, 106-514 to 106-516.1, 106-518, 106-520.7, 106-549, 106-549.26 to 106-549.28, 106-549.34, 106-549.36, 106-549.68, 106-579.11, 106-579.12, 106-614, 106-644, 106-668, 106-714, 106-776, 108A-39, 108A-53, 108A-57, 108A-60, 108A-64, 108A-65, 108A-80, 110-20.1, 110-48, 110-55, 110-103, 111-23, 112-32, 112-36, 113-25, 113-34, 113-35, 113-55, 113-58, 113-60.3, 113-60.29, 113-135, 113-137, 113-167, 113-187, 113-202, 113-207 to 113-209, 113-222, 113-229, 113-230, 113-262, 113-264, 113-266, 113-268, 113-269, 113-270.1, 113-273, 113-275, 113-276.2, 113-277, 113-286, 113-290.1, 113-291.1, 113-294, 113-295, 113-300.3, 113-303, 113-307.1, 113-315.9, 113-315.34, 113-380, 113-409, 113A-42, 113A-64, 113A-126, 113A-170, 113A-195, 113A-226, 113B-24, 115B-6, 115C-13, 115C-45, 115C-276, 115C-288, 115C-307, 115C-317, 115C-323, 115C-379, 115C-380, 115C-383, 115C-447, 115C-525, 115C-534, 115D-96, 116-213, 116-235, 116B-28, 119-4, 119-13, 119-13.3, 119-16.2, 119-16.3, 119-25, 119-27, 119-32, 119-33, 119-35, 119-39, 119-41, 119-59, 120-32, 120-32.1, 120-47.9, 120-86, 121-4, 121-5, 121-28, 122C-25, 122C-28, 122C-52, 122C-65, 122C-66, 122C-158, 122C-192, 122C-406, 124-3, 125-11, 126-13,

		1994 (Ex. Sess.)
Ch.	**Sec.**	**General Statutes**
24	14(c)	126-14, 126-14.1, 126-18, 126-27, 126-28, 127A-131, 127A-151, 127A-152, 127B-5, 127B-7, 127B-15, 128-4, 128-12, 128-28, 128-32, 130A-25, 130A-26, 130A-26.1, 130A-55, 130A-65, 130A-196, 130A-304, 130A-431, 131C-22, 131D-2, 131D-6, 131D-10.7, 131D-13, 131E-80, 131E-81, 131E-90, 131E-109, 131E-141.1, 131E-151, 131E-154.8, 131E-161, 131E-207, 132-3, 132-4, 132-5, 133-4, 133-31, 133-32, 134A-25, 135-6, 135-10, 136-13, 136-14, 136-18, 136-18.4, 63-26, 136-20, 136-26, 136-32, 136-32.1, 136-32.2, 136-33, 136-72, 136-80, 136-89, 136-89.58, 136-90, 136-91, 136-92, 136-93, 136-94, 136-102, 136-102.4, 136-102.6, 136-125, 136-135, 136-145, 139-18, 139-27, 143-32, 143-34, 143-54, 143-58.1, 143-63, 143-115, 143-116.6, 143-129, 143-129.1, 143-138, 143-143.24, 143-151, 143-151.18, 143-151.36, 143-152, 143-153, 143-214.2A, 143-214.4, 143-215.6B, 143-215.17, 143-215.36, 143-215.58, 143-215.69, 143-215.88B, 143-215.98, 143-215.102, 143-215.114B, 143-318.17, 143-340, 143-341, 143-345.1, 143-345.2, 143-354, 143-355, 143-469, 143-547, 143B-74.3, 143B-181.20, 143B-181.25, 143B-450.1, 143B-461, 143B-472.3, 143B-472.6, 143B-472.10 to 143B-472.13, 143B-472.15, 143B-472.19, 143B-499.6, 146-13, 146.43, 147-9, 147-33.3, 147-79, 147-80, 148-45,
24	14(c)	148-46.1, 153A-98, 153A-224, 153A-225, 153A-334, 153A-356, 153A-357, 153A-361, 153A-363, 153A-367, 153A-371, 156-19, 156-24, 156-25, 156-32, 156-33, 156-92, 156-111, 156-112, 156-114, 156-132, 157-29.1, 159-34, 159-181, 160A-80, 160A-168, 160A-308, 160A-375, 160A-388, 160A-416, 160A-417, 160A-421, 160A-423, 160A-427, 160A-431, 160A-443, 161-22, 161-27, 162-55, 163-152, 163-155, 163-171, 163-173, 163-177, 163-221, 163-236, 163-237, 163-269 to 163-271, 163-272.1 to 163-274, 163-278.13, 163-278.13A, 163-278.19, 163-278.20, 163-278.27, 163-278.44, 163-278.53, 168-4.5
	14(d)	143B-273 note, 143B-273.5 note, 143B-273.8 note, 143B-273.13 note, 143B-273.14 note, 143B-273.15 note
	14(e)	148-4.1
	16(a), (b)	148-37
	19(a), (b)	15A-1343 note
	30(a)	143B-152.1 to 143B-152.7
	31(a)	143B-152.10 to 143B-152.15
	(e)	143-23 note
	35(a)	7A-289.13
	37	122C-421 note
	42(a)	115C-238.40 note
	(b)	115C-238.40 to 115C-238.47
	49(a)	120-70.93, 120-70.94, 120-70.95
	55	143-1 note
	60	116-1 note
	67(b)	113A-1 to 113A-10 note, 113A-50 to 113A-66, note, 133-1.1 note, 143-128 note, 143-129 note, 143-131 note,

		1994 (Ex. Sess.)
Ch.	**Sec.**	**General Statutes**
24	67(b)	143-132 note, 143-134 note, 143-135.26 note, 143-408.1 to 143-408.7 note
	69	143-1 note
	71	7A-289.13 note, 15A-1340.10 note, 115C-238.40 note, 115C-238.41 note, 115C-238.42 note, 115C-238.43 note, 115C-238.44 note, 115C-238.45 note, 115C-238.46 note, 115C-238.47 note, 120-70.93
24	71	note, 120-70.94 note, 120-70.95 note, 143-23 note, 143B-152.1 note, 143B-152.10 note, 148-37 note
	72	143-16.3 note
25	1, 2	15A-1371
26	1	15A-505
27	1	7A-577
	2	7A-571
	3	7A-572
28	1	14-72.1

SESSION LAWS OF 1993 (Reg. Sess., 1994)

		1993 (Reg. Sess., 1994)
Ch.	**Sec.**	**General Statutes**
557	1	113-296
	2	113-270.3
559	1	136-128 note
	2	136-129 L.M.
560	1	62-36A
562	1	17E-3 note
564	1	90-270.45 note
	2	90-270.45 to 90-270.52, 90-270.53 Repealed, 90-270.54 to 90-270.62
	3	90-270.45 note, 90-270.49 note, 90-270.50 note
	4	90-270.45 note, 90-270.49 to 90-270.51 note
565	1	50-12
	2	101-8
566	1	90-15.1
	2	90-15
568	1	74-49
	2	74-50
	3	74-51
	4	74-52
	5	74-54
	6	74-54.1
	7	74-56
	8	74-58
	9	74-61
	10	74-64
569	1	58-49-1
	2	58-49-5
	3	58-49-10
	4	58-49-15
	5	58-49-20
	6	58-50-110
	7, 8	58-50-130
	9	58-53-50
569	10	58-53-55
	11	143-623
	12	143-625
	13	90-270.20
	14	90-270.2
	15	90-270.6 note
570	1	143-318.10
	2	143-318.11
	3	143-318.16B
	4	143-318.16C, 143-318.16D
	5	143B-282.1
	6	90-16
	7	90-270.15
	8	90-390
	9	120-131
	10	131E-97 to 131E-97.3
	11	159B-38
571	1	15A-406
572	1	126-37
	2	150B-23
573	1	143-128 L.M.
574	1	153A-335 L.M.
575	1	115D-59 L.M.
576	1	113-153.1
	2	113-154
	3(a)	113-152 note, 113-153.1 note, 113-154 note, 113-154.1 note
	(b)	113-153.1 note
	(c)-(f)	113-152 note, 113-153.1 note, 113-154 note, 113-154.1 note
	4-6	113-152 note, 113-153.1 note, 113-154 note, 113-154.1 note
577	1	105-472 L.M.
579	1	18B-1000

Ch.	Sec.	1993 (Reg. Sess., 1994) General Statutes
580	1	130A-294
	2	130A-301.1
	3	130A-294 note, 130A-301.1 note
581	1	7A-109 note, 14-402 note, 14-409.1 note
582	1	105-159
	2	105-130.20
	3	105-160.8
	4	105-163.6A
	5	105-241.1
	6	105-197.1
584	1	105-130.23
	2	105-130.28
	3	105-130.32
	4	105-151.2
	5	105-151.8
586	1	143-135 L.M.
590	1	160A-360 L.M.
591	5(a)	143-15.2
	(b)	143-15.3
	(c)	143-15.3A
	6(a)	164-35 to 164-45
	(b)	164-38
	7	122C-151.1 note
	9	105-164.44B
	10(a)	116-30.1 to 116-30.5, 116-37, 143-53.1
	11(a)	115C-102.5
	12	90-332.1
	13(a)	143-341 note
	16(a), (b)	90-332.1
592	1	122C-147
	2	160A-20
594	1	1A-1-58
595	1, 2	20-7
596	1	14-401.5
597	1	14-269.7
	2	14-315
598	1	130A-310.9
	2	130A-310.12
	4	130A-26.2 note, 130A-310.9 note, 130A-310.12 note
599	1	53-209 to 53-211, 53-212 Repealed 53-213 53-215 note 53-216 to 53-218
	2	53-214
	3	53-211
600	1	58-7-16
	2	58-30-220
	3	78A-2
	4	105-228.5
602	1	132-1 L.M.
605	1	160A-45 L.M.
	3	160A-58.1 L.M.
608	1	40A-42 L.M.
611	1	153A-157

Ch.	Sec.	1993 (Reg. Sess., 1994) General Statutes
608	1.1	153A-157 L.M.,
	2	115C-518 L.M., 153A-158.1 160A-274 L.M.
612	1	153A-157
	1.1	153A-157 L.M., 153A-158.1
	2	115C-40 L.M., 115C-521 L.M., 153A-158.1
	3	115C-518 L.M., 153A-158.1 160A-274 L.M.
613	1	153A-158 L.M.
	2	115D-15 L.M., 160A-274 L.M.
614	1	153A-157
	2	153A-157 L.M., 153A-158.1
	3	115C-40 L.M., 115C-521 L.M., 153A-158.1
	4	115C-518 L.M., 153A-158.1 160A-274 L.M.
616	1	159-24 L.M.
619	1	168-22
621	1	20-382
	2	20-382.1
	3	20-382.2
	4	20-385
	5	20-376
622	1	153A-157
	1.1	153A-157 L.M., 153A-158.1
	2	115C-40 L.M., 115C-521 L.M., 153A-158.1
	3	115C-518 L.M., 153A-158.1 160A-274 L.M.
623	1	153A-157
	1.1	153A-157 L.M., 153A-158.1
	2	115C-40 L.M., 115C-521 L.M., 153A-158.1
	3	115C-518 L.M., 153A-158.1 160A-274 L.M.
624	1	153A-15
625	1	160A-176.2
626	1	115C-37 L.M.
627	1	160A-266 L.M.
	2	160A-266 L.M.
628	1	153A-15
631	1	160A-311 L.M.
633	1	58-84-1 note
634	1, 2	7A-109 note, 14-402 note, 14-409.1 note
636	1	58-84-1 note

Ch.	Sec.	1993 (Reg. Sess., 1994) General Statutes
637	1	75A-17 L.M.
638	1	153A-330 L.M.
639	1	115C-518 L.M., 160A-265 L.M.
640	1	128-21 L.M.
641	2	159-7 L.M.
	3(a)	153A-157 L.M.
	(b)	115C-40 L.M., 115C-521 L.M.
	(c)	115C-518 L.M., 160A-274 L.M.
	(d)	153A-157 L.M.
	4(a)	153A-331 L.M.
	(b)	153A-330 L.M.
	(c)	153A-341 L.M.
	(d)	153A-340 L.M.
642	1	132-1 L.M.
	3(c)	153A-158.1
	(d)	
644	1	58-51-115, 58-51-120, 58-51-125
	2	58-51-30
	3	108A-69, 108A-70
	4	58-51-30 note, 58-51-115 to 58-51-125 note, 108A-69 note, 108A-70 note
645	1	105-322 L.M.
647	1-3	51-9 to 51-11 Repealed
	4	51-13 Repealed
	5	130A-261
648	1	132-1 L.M.
650	1	15-12 L.M., 160A-265 L.M.
653	1	58-86-55
654	1	115C-35 L.M.
655	1	153A-157
	1.1	153A-157 L.M., 153A-158.1
	2	115C-40 L.M., 115C-521 L.M., 153A-158.1
	3	115C-518 L.M., 153A-158.1 160A-274 L.M.
656	1	7A-112
658	1	160A-279 L.M.
	1.2	150B-45 L.M., 150B-51 L.M. 160A-457 L.M.
660	2	163-278.6 L.M., 163-278.40 L.M.
	3	14-410
	3.1	14-413
661	1	105-163.6
	2	105-251
662	1	105-228.90
	2, 3	105-266
663	1	113-29 note, 113-44.7 note
664	1	58-6-25 note
	2	62-302 note
666	1	159-24 L.M.
667	1	143-135 L.M.
668	1	143-64.31 L.M., 143-64.32 L.M., 143-128 L.M., 143-129 L.M., 143-131 L.M., 143-132 L.M.
670	1	130A-283
	2	130A-39
	3	130A-29
671	1	89C-3
	2	89C-13
	3	89C-18
	4	89C-24
	5	89C-14
	6	89C-21
	7	89C-22
	8	89C-10
672	1	20-135.2B
	2, 3	20-135.2B note
673	1	14-51.1
674	1, 2	105-130.25
	3	105-269.15
	4	105-130.25
675	1, 2	113-153.1
	3, 4	113-152 note, 113-153.1 note, 113-154 note, 113-154.1 note
676	1	131E-14.1
677	1	110-148
	2	115C-21.1
	3	115C-105.3
	4	115C-105.5
677	5	115C-174.19 Repealed
	6	115C-238.17
	7	115C-238.7
	8	115C-15, 115C-238.1 note
	9	115C-238.24
	10	115C-325
	11	115C-290.5
	12(a)	116-74.43
	12.1	116C-3
	14	115C-12 note, 115D-5 note, 116-11
	15	115C-12 note, 115C-47 note, 115C-418
	16(a)	115C-287, 115C-287.1, 115C-325
	20	115C-85
678	1	58-12-2, 58-12-6, 58-12-11, 58-12-16, 58-12-21 to 58-12-55
	2	58-12-1

Ch.	Sec.	1993 (Reg. Sess., 1994) General Statutes
678	3	58-2-105
	4	58-3-75
	5	58-3-90
	6	58-3-172
	7	58-5-71
	8	58-7-21
	9	58-7-31
	10	58-7-150
	11	58-7-163
	12	58-7-170
	13	58-13-10
	14	58-19-25
	15	58-21-20
	16	58-21-35
	17	58-30-275
	18	58-33-130
	19	58-34-2
	20	58-35-100
	21	58-40-140
	22	58-41-10
	23	58-48-95
	24, 25	58-50-130
	26	58-62-77
	27	58-62-92 Repealed
	28	58-62-95
	29	58-64-33
	30	58-69-40
	31	58-70-65
	32	58-71-71
	33	58-85-1
	34	143-143.14
	35	143-151.15
	36	143-151.17
679	1	58-36-1 note, 58-50-65 note, 90-411 note, 97-2 note, 97-18 note, 97-18.1 note, 97-19 note, 97-24 note, 97-25.1 note, 97-25.2 note, 97-25.3 note, 97-25.4 note, 97-25.5 note, 97-26 note, 97-26.1 note, 97-32.1 note, 97-40.1 note, 97-42 note, 97-47.1 note, 97-77.1 note, 97-79 note, 97-80 note, 97-81 note, 97-82 note, 97-83 note, 97-83.1 note, 97-86 note, 97-88.2 note, 97-88.3 note, 97-90 note, 97-92 note, 97-93 note, 97-94 note, 105-163.7 note, 105-259 note, 135-39.5 note
	2.1	97-25.2
	2.2	97-25.3
	2.3	97-26
	2.4	97-25.4, 97-25.5
	2.5	97-25.1
	2.6	97-2
679	3.1	97-18
	3.2	97-82
	3.3	97-83
	3.4	97-24
	3.5	97-47.1
	3.6	97-18.1
	3.7	97-42
	4.1	97-32.1
	5.1	97-77.1
	5.2	97-79
	5.3	97-80
	5.4	97-80 note
	5.5	90-411
	5.6	97-26.1
	5.7	97-83.1
	6.1	97-40.1
	7.1	97-88.2
	7.2	97-88.3
	8.1	97-94
	8.2	97-93
	8.3	105-163.7
	8.4	105-259
	8.5	58-36-1
	9.1	97-90
	10.1	97-31.1 note
	10.2	97-81
	10.3	135-39.5
	10.4	58-50-65
	10.5	97-86
	10.6	97-19
	10.7	97-2
	10.8	97-92
	10.9	97-18.1
680	1-3	96-12
	4	96-8
	5	96-13
	6	96-21
	7-9	96-8
681	1	105-130.41
	2	105-151.22
	3	105-130.41 note, 105-151.22 note
682	1	143B-80.5 to 143B-80.14
	2	121-9
	3, 4	143B-80.5 note
683	1	20-127
684	1	113-270.1B to 113-270.1D
	2	113-270.2
	3	113-270.3
	4	113-271
	5	113-272
	6	113-276
	6.1	113-272.3
	7	113-275
	8, 9	113-276
	10-12	143-250.1
	13	143-240
	14	143-241

Ch.	Sec.	1993 (Reg. Sess., 1994) General Statutes
684	15	143-241 note
685	1	90-113.30 to 90-113.46
	2	90-332.1
	3	90-338
686	1	130A-22
	2	130A-444
	3	130A-447
	4	130A-448
	5	130A-451
	6	143-215.107
	7	130A-452
687	1	14-33
	2	14-34.2
688	1	90-294
	2	90-298.1
689	1	90-400
	2	90-401
	3	90-401.1
	4	90-402
	5	90-401 note, 90-401.1 note, 90-402 note
690	1	136-66.1
	1.1	136-41.3
691	1	146-22.2
692	1	90-85.22
	2	90-85.3
	3	90-85.24
	4	90-85.40
693	1	157-5 L.M.
694	1	143-215.3
	2	143-215.3C
695	1	132-1 L.M.
696	1	162A-86
	2	162A-87
	3	162A-87.1A
	4	162A-87.2
	5	162A-88.1
	6	160A-36
	7	160A-48
	8	159G-10
	8.1	162A-6
697	1, 2	20-79
698	1	131D-34
700	1	40A-5 L.M., 40A-42 L.M.
705	1	143-128 L.M., 143-129 L.M., 143-131 L.M., 143-132 L.M.
706	1	158-8 L.M.
709	1	143-129 L.M.
712	1	143-129 L.M.
713	1	160A-29 L.M.
	2	160A-33 L.M., 160A-45 L.M.
714	1	162A-86
	2	162A-87
	3	162A-87.1A
	4	162A-87.2
	5	162A-88.1

Ch.	Sec.	1993 (Reg. Sess., 1994) General Statutes
714	6	160A-36
	7	160A-48
	8	159G-10
715	1	130A-5
716	1	58-51-81
	2	115C-47
717	1-3	113-206
	4	105-151.12
719	1	20-130.1
	2	20-125
720	1	58-57-100
	2	58-57-90
721	1	153A-176 L.M., 160A-265 L.M.
	2	153A-176 L.M., 160A-265 L.M.
	3	14-234 L.M.
722	1, 2	130A-294
723	1-4	15A-534.4 note
	5	15A-534.4
	6	15A-534.4 note
724	1	143-151.43 to 143-151.63
725	1	136-131.1, 136-131.1 note
726	1	105-430
	2	105-432.1
	3	105-433
	4	105-438.1
	5	105-441
	6	105-447
	7	105-449.27
	8	105-449.34
	9	105-449.2
	10	105-449.24A
729	1	160A-360 L.M.
	3	159-7 L.M.
730	1	58-1-36
	2	58-1-35
	3	58-1-25, 58-1-25 note, 58-1-30, 58-1-30 note, 58-1-35, 58-1-35 note, 58-1-40 Repealed, 58-1-40 note, 58-1-41 note, 58-1-45 Repealed, 58-1-45 note, 58-1-50 Repealed, 58-1-50 note
	4	58-1-25, 58-1-30
	5	58-1-35
	6	58-1-30
731	1	105-53
732	1	130A-282
	2	130A-23
	3, 4	130A-23 note, 130A-282 note

Ch.	**Sec.**	**1993 (Reg. Sess., 1994) General Statutes**
733	1	8-50.1
	2	110-132.1
	3	1A-1-55
734	1	128-27 note, 135-5 note
735	1	105A-2
736	1	136-27.1
	1.1	130A-50
737	1	160A-384 L.M.
738	1	163-210
	2	163-1
739	1	105-164.13
740	1	115C-295.1
	2, 3	115C-295.1 note
741	1	153A-357
	2	160A-417
	3	143-138 L.M.
744	1	163-278.8
745	1	105-330.1
	2	105-113.18
	3	105-113.45
	4, 5	105-130.5
	6	105-130.37
	7	105-134.6
	8	105-163.012
	9, 10	105-163.013
	11	105-213
	12	105-228.4
	13	105-228.90
	14	105-241.1
	15, 16	105-241.2
	17	105-248
	18	105-258.1
	19	105-269.3
	20	105-446
	21	105-449.16
	22	105-449.17
	23	105-449.18
	24	105-449.19
	25	105-449.20
	26	105-449.26
	27	105-449.32 Repealed
	28	18B-902
	29	119-16.2
	30, 31	158-37
	32	105-113.51
	33	105-113.52
	34	105-130.27
	35	105-151.6
	36, 37	130A-309.81
	38	130A-309.81
	38.1	90B-10
	38.2(a)	105-113.46
	(b)	105-113.47
	38.3(a)	25A-27
	(b)	25A-27 note
	39	105-275
748	1	20-137.1
749	1, 2	18B-901
750	1	20-7
	2	20-37.7
750	3	20-37.15
	4	20-37.16
	5	20-52
	6	20-37.16
751	1	158-31
	2	158-33.1
	3	158-42
	4	20-97 L.M.
753	1	75A-13.2
	2	75A-2
	3	75A-15
754	1	20-183.2 to 20-183.8E
	2	20-183.1
	3	20-183.1 Repealed
	4	20-127
	5	20-128.2
	6	20-384
	7	20-54
	8	20-183.8A
	9-12	20-183.2 note
	13, 14	20-182.2 note
755	1	88A-10
	2	88A-10.1
	3	88A-12
	4	88A-15
	5	88A-19
	5.1	88A-7
756	1	25-2A-103
757	1	143-128 L.M., 143-129 L.M., 143-131 L.M., 143-132 L.M.
	2	143-128 L.M., 143-129 L.M., 143-131 L.M., 143-132 L.M.
759	1	131C-1 to 131C-22 Repealed
	2	131F-1 to 131F-3, 131F-5 to 131F-9, 131F-15 to 131F-18, 131F-20 to 131F-24, 131F-30 to 131F-33
761	1	20-17
	1.1	20-7
	2, 3	20-28
	4	20-35
	5	20-66
	6	20-79
	7	20-88.1
	8	20-95
	9	20-97 L.M.
	10-16	20-118
	17	20-174.1
	18	20-193 Repealed
	19	20-212 to 20-215 Repealed
	20	20-218
	21	20-218.1 Repealed

		1993 (Reg. Sess., 1994)
Ch.	**Sec.**	**General Statutes**
761	22	20-4.01
	23	20-218.2
	24	20-219 Repealed
	25	20-231.1 Repealed
	26	20-279.7A
	27	20-279.34 Repealed
	28	20-309.1 Repealed
	29	20-310
	30	58-36-85
	31	20-310.2
	32	120-70.50
	33	158-42
	34	160A-623
	34.1	20-138.5
762	1	163-65 to 163-67 Repealed, 163-69 to 163-82 Repealed
	2	163-82.1 to 163-82.26
	3	163-41
	4	163-47
	5	163-1 note, 163-153
	6	163-36
	7	163-119
	8	18B-601
	9	115C-506
	10	139-40
	11	158-17
	12	163-22
	13	163-31
	14	163-32
	15	163-33
	16	163-35
	17	163-42
	18	163-43
	19	163-45
	20	163-46
	21	163-48
	22	163-57
	23	163-59
	24	163-84
	25	163-85
	26	163-87
	27	163-88
	28	163-88.1
	29	163-89
	30	163-105
	31	163-106
	32	163-109
	33	163-128
	34	163-129
	35	163-141
	36	163-142
	37	163-143
	38	163-144
	39	163-146
	40	163-147
	41	163-148
	42	163-150
	43	163-152
	44	163-152.1
762	45	163-153
	46	163-155
	47	163-168
	48	163-169
	49	163-171
	50	163-173
	51	163-174
	52	163-213.7
	53	163-227.2
	54	163-232
	55	163-234
	56, 57	163-251
	58(a)-(c)	163-274
	58(d)-(g)	163-275
	59	163-280
	60	163-281
	61	163-41 note
	62	163-283
	63	163-285
	64	163-286
	65	163-287
	66	163-288
	67	163-288.2
	68	163-295
	69	163-132.1
	70	163-132.2
	71	163-132.3
	72	163-65 note, 163-82.6 note
763	1	44A-35
	2	22B-10
764	1	14-453, 14-454, 14-455, 14-456
765	1	136-82.2
766	1	143B-168.11 to 143B-168.16
767	1	15A-1340.20
	2	162-60
	3	153A-230.3
	4	15A-1368.2
	5	15A-1368.3
	6	15A-1342
	7	15A-1351
	8	15A-1343.2
	9	15A-1344
	10	15A-1351
	11-13	15A-1340.14
	13.1	15A-1340.21
	14	7A-771
	15	7A-773
	16	14-7.6
	17	15A-1340.10
	18	130A-25
	19	7A-456
	20	14-253
	21	14-277.4
	22	54C-64

Ch.	Sec.	1993 (Reg. Sess., 1994) General Statutes
767	23	58-2-180
	24	58-8-1
	25	58-24-180
	26	74E-13
	27	77-57
	28	90-210.70
	29(1)	14-20 Repealed
	(2)	14-43 Repealed
	30(1)	14-116 Repealed
	(2)	14-133 Repealed
	(3)	14-140 Repealed
	(4)	14-170 Repealed
	(5)	14-171 Repealed
	(6)	14-172 Repealed
	(7)	14-173 Repealed
	(8)	14-174 Repealed
	(9)	14-175 Repealed
	(10)	14-176 Repealed
	(11)	14-195 Repealed
	(12)	14-222 Repealed
	(13)	14-310 Repealed
	(14)	14-311 Repealed
	(15)	14-312 Repealed
	(16)	14-356 Repealed
	(17)	14-389 Repealed
	(18)	14-396 Repealed
	(19)	14-397 Repealed
	31	14-32.1
	32	20-138.5
	33	17E-3 note
769	2	
	7.1	147-11
	7.4(b)	62-10
	7.5	120-3
	7.6, 7.7	120-37
	7.10(a)	7A-101
	(b)	7A-101 note
	7.11, 7.12	7A-102
	7.13(a)	7A-171.2
	(b),	
	(c)	7A-171.1
	(d)	7A-171.1 note, 7A-171.2 note
	(f)	7A-102 note
	(g)	126-7 note
	7.27(a)	143-15.3 note
	(b)	143-15.3
	7.27A	138-6
	7.28	120-3.1
	7.28A	143-34.1, 115C-341.1, 115C-441.1, 115D-25.1, 115D-25.2, 116-17.1, 116-17.2, 143-34.1
	7.29(a)	120-4.8
	(b)	120-4.8 note
	7.30(a)	128-24
	(b)-	
	(d)	128-27
769	7.30(e),	
	(f)	135-3
	(g)-	
	(j)	135-5
	(k)	120-4.22A
	(l)	128-27
	(m)	135-5
	(n)	135-65
	(o)	120-4.16 note
	(p)	120-4.21
	(q)	135-114
	(r)	135-5
	(s)	135-101
	(t)	135-105
	(u)	135-106
	7.31(a),	
	(b)	128-24
	(c)	135-1
	(d),	
	(e)	135-3
	8.3(a),	
	(b)	114-10.1 note
	9.2	55-16-22 note
	9.3	58-86-1 note
	10.1(a),	143B-426.39A note
	(b)	
	(c)-(e)	143B-426.39A
	(f)-(i)	143B-426.39A note
	11.1(a)	143A-17
	(b)	143-3.5
	(c)	143-10.3, 143-10.4, 143-10.5, 143-10.6
	(d)	143-11
	11.3	143-15.1
	11.6	143B-367 note
	12.1(a)	143-408.3
	(b)	143-408.4
	12.1(c)	143-408.5
	(d)	143-408.3 note, 143-408.4 note, 143-408.5 note
	12.2	121-20
	12.3	121-7
	12.5(a)	143B-131.1 to 143B-131.7
	(b)	143B-130 note, 143B-131 note
	(c)	143B-129 to 143B-131 Repealed
	(d)	143B-129 note, 143B-131.1 note
	13	143-23
	14.1	58-2-215
	15.1(a)	105-187.24
	(b)	105-187.24 note
	16	163-82.11 note, 163-82.12 note, 163-82.13 note
	16.1	163-82.1 note
	16.2	163-82.20 note

Ch.	Sec.	1993 (Reg. Sess., 1994) General Statutes
769	17	116-19 note
	17.6(a)	116-30.6
	(b)	143-53.1
	(c)	116-30.2
	17.7(a), (b)	113-152 note, 113-153.1 note, 113-154 note, 113-154.1 note
	17.10	116-143 note
	17.11(a)	90-171.61
	(b)	90-171.62
	17.14	116-11 note
	17.15	66-58
	17.16	116-209.30
	18	115D-5 note
	18.1	115D-54 note
	18.2	143-16.3 note
	18.4	115D-5
	19(a)	115C-12
	(b)	115C-12 note
	19.5(a)	115C-81
	(b), (c)	115C-81 note
	19.5A(b)	115C-81 note
	19.9	115C-12
	19.10	115C-151 note
	19.11	115C-295 note
	19.18-19.22	115C-302 L.M., 115C-316 L.M.
	19.26(a)	115C-102.6
	(b)	115C-102.6A to 115C-102.6D
	(c)	115C-102.7
	(d)-(f)	115C-102.6B note
	19.32(a)-(d)	115C-1 note, 115C-81 note
	19.33(a)	143-291
	20	20-39
	20.2	136-12 note
	20.4	136-44.2A note, 136-44.5 note
	20.10	136-12 note, 143B-261 note
	20.12	130A-47 note
	21	148-70 note
	21.2	148-4.1 note, 148-37 note
	21.5(a)	148-2
	(b)	15B-23
	(c)	15B-23 note
	21.7(a)	15A-1344
	(b)	15A-1344 note
	22.1	143B-474 note
	22.3	127A-193
	22.4(a)	166A-1
	(b)	166A-20 to 166A-28
	24	7A-133 note
769	24.1(b)	7A-771 note, 7A-772 note
	24.2	143-48 note
	24.7	7A-45 note, 7A-45.1 note
	24.8A	7A-346.1
	24.9	7A-133
	24.12	7A-41 note, 7A-41.1 note
	25.8(a)	108A-39.1
	25.13	108-54 note
	25.17	115C-106 note, 122C-147 note, 130A-5 note, 134A-1 note
	25.19	90-338
	25-23	143-23 note
	25.26	143B-138 note
	25.29	138-5 note
	25.33	143B-168.12 note
	25.37	108A-48 note
	25.46	48-9.1 note, 108A-54 note
	25.47(a)	108A-70.5
	(b)	108A-70.5 note
	25.48	58-67-10
	26(a)	106-435
	27.1(a)	105-164.44B
	27.3(a), (b)	113-291.6 note
	27.8(a)	143-577
	(b)	143-573 note, 143-574 note, 143-577 note
	(d)	143-573
	27.9	130A-124 note
	27.9(a)-(f)	130A-124 note
	27.10(c)	130A-131.15 note
	27.16(a)	113-154
	27.17(a)-(d)	113-184 note, 113-309 note
	27.18	143-16.3 note
	27.21	113-44.14 note
	28.1(b), (c)	143B-437A note
	28.7(a)-(i)	158-8 note, 158-8.1 note, 158-8.2 note, 158-8.3 note
	(j)	158-8.1
	(k), (l)	158-8.2
	(m)	158-8.3
	28.8(a), (b)	158-8.1
	(c), (d)	158-8.2
	(e),	

		1993 (Reg. Sess., 1994)
Ch.	**Sec.**	**General Statutes**
769	28.8(f)	158-8.3
	28.9	158-8.1 note
	28.15(a)	97-77
	28.16	160A-360 L.M., 160A-457.1 L.M.
	28.20	97-88.2 note
	28.21	143B-429 note
	29(a)	95-47.4
	(b)	95-47.7
	35	143-15.3A note
	43	143-1 note
770	1	113-152 note
771	2.1	120-195 to 120-203
	3.1-3.7	163-1 note
	6.1	58-68A-1 note
772	1	113-44.15
	2	105-228.30
	3	113-77.6 to 113-77.9
773	15.1	143B-434
	15.2(a), (b)	90-113.32
774	19	90-182 note
775	1, 1.1	143-64.10
	2	143-64.16
	3	143-64.17 to 143-64.17E
	4	143-129.4
	5	115C-47
	6	115C-521
	7	115D-20
	8	133-4.1
	9	115C-47 note, 115C-521 note, 143-64.17B note
	10	115C-47 note, 115C-521 note, 143-64.17B note
776	1	113A-52
776	2	113A-52.01
	3	113A-54
	4	113A-54.1
	5	113A-54.2
	6	113A-55
	7	113A-60
	8, 9	113A-61
	10	113A-61.1
	11	113A-64
	12	113A-64.1
	13	113A-65
	14	130A-313
	15	130A-315
777	1(a)	143B-426.39
	(b)	62-3
	2	150B-21.18
	3(a)	115C-88
	(b)	115C-99
	(c)	115C-100
	4(b)	63A-1
	4(c)	63A-2
	(d), (d1)	63A-3
	(e)	66-58
	(f)	120-123
	(g)	126-5
	(h)	143-336
	(i)	147-69.2
	(j), (k)	150B-1
	5(a)	143-291
	6(a), (b)	113-229
	7(a)	143-640 to 143-643
	(b)	143-640 note
778	1	113-272.2

SESSION LAWS OF 1995

		1995
Ch.	**Sec.**	**General Statutes**
1	1	105-360 note, 105-380 note, 105-381 note
	2	105-360 note, 105-380 note, 105-381 note
2	1	146-1 note, 146-11 note, 146-12 note
	3	146-11 note, 146-12 note
4	1-3	96-9
5	1	920-2-22
	2	920-3-5
	3	920-2-22 note, 920-3-5 note
	4	920-2-22 note, 920-3-5 note
	6	115-2 note
7	1	105-164.6
	2	105-164.6 note
8	1	115C-521
9	1	44-51.8
	2	14-111.2
	3	14-111.3
12	..	115C-302 L.M., 115C-316 L.M.
14	1	20-127
15	1	62-133.2
	2	62-133.2
16	..	105-164.14 L.M.
17	1	105-113.82
	2	105-130.25
	3	105-130.2
	4	105-134.5
	5	105-134.6
	6	105-164.4
	7	105-164.6
	8	105-164.14

Ch.	Sec.	1995 General Statutes
17	9	105-228.90
	10	105-241.2
	11	105-259
	11.1	105-266
	11.2	105-266.1
	12	105-434
	13	105-449.20
	13.1	105-449.45
	14	153A-158
	15(a),	153A-157,
	(b)	153A-158.1
	16	153A-158.1 note
	17	105-130.41, 105-151.22
	18	105-241.1
19	..	75A-6 L.M.
20	1	120-33
	2	120-29.1
	3	120-20
	4	120-30.9B
	5	120-30.9C
	6	120-30.9E
	7	120-30.9F
	8	120-30.9G
	9	147-36
	10	1A-1-9
	11	97-31.1
	12	120-34
	13	120-133
	14	120-149.3
	15	130A-51
	15.1	120-6.1
	16	103-5
	17	1A-1-9 note, 97-31.1 note, 103-5 note, 120-6.1 note, 120-20 note, 120-29.2 note, 120-30.9B note, 120-30.9C note, 120-30.9E to 120-30.9G note, 120-33 note, 120-34 note, 120-149.3 note, 130A-51 note, 147-36 note
21	1	105-164.14
	2	105-259
22	1	93A-4
24	1	105-330.5
25	1	130A-315
27	1	62-2
	2, 3	62-3
	4	62-110
	5	62-133.3 Repealed
	6	62-133.5
	6.1	62-2 note, 62-3 note, 62-110 note, 62-133.5 note
28	1	62-110.3
32	1	113-291.4A
33	1	136-27.1

Ch.	Sec.	1995 General Statutes
34	2.5	160A-74 L.M.
	2.6	169A-63 L.M.
	4	20-97 L.M., 58-84-1 L.M., 136-66.2 L.M.
	5.3	105-349 L.M.
36	1	113-275
	2	113-272.2
41	1(a)	105-213 Repealed 105-275.2
	1(b)	105-201 to 212 Repealed, 105-214 to 105-217 Repealed
	2	105-275
	3	105-275.2
	4	105-501
	5	105-288
	6	105-276
	7	105-282.1
	8	105-305
	9	108A-93
	10	142-12.1
	11	105-198 note, 105-214 note, 105-275 note, 105-275.2 note, 105-276 note, 105-282.1 note, 105-288 note, 105-305 note, 105-501 note, 108A-93 note, 142-12.1 note
42	1,	105-134.6
	2(a),(b)	105-134.6
	3	105-151.24
43	1	58-2-161
45	..	18B-700 L.M.
46	1	53A-1 to 53A-19 Repealed
	2	63A-9
	3	105-134.6
	4	25-9-101 note, 115C-513
	5	115E-21
	6	116-183
	7	116-196
	8	116-198.39
	9	116-209.13
	10	122A-19
	11	122D-14
	12	131A-21
	13	131E-28
	14	142-12
	15	142-29.6
	16	143B-456
	17	157-26
	18	159B-26
	19	159I-23
	20	160A-516
47	1	106-277.5
	2	106-277.6
	3	106-277.7

		1995
Ch.	**Sec.**	**General Statutes**
47	4	106-277.15
	5	106-277.28
49	1	14-269.2
50	1	20-79.2
	2	20-85
	3	20-109.1
	4	20-51
	5	105-449.47
51	1	7A-41
	2(a), (b)	7A-41 note
53	1	160A-303.2 L.M.
54	1-3	143-128 L.M.
55		113-291.2 L.M.
56		160A-279 L.M.
57	1, 2	160A-265 L.M.
58		67-30 L.M.
60	1	115C-12
61		153A-236 L.M.
62	1	113-297
63	1	58-51-38
64	1	113-291.1
66		115C-37 L.M.
69		163-1 L.M.
70		143-128 L.M., 143-129 L.M., 143-131 L.M., 143-132 L.M.
72	1	115C-19
	2	115C-21
	3	143A-44.1 to 143A-44.3
73	4	20-162 L.M., 20-162.1 L.M., 105-349 L.M., 160A-58.2 L.M., 160A-59 L.M., 160A-63 L.M., 160A-237 L.M., 160A-272 L.M., 163-175 L.M.
77		115C-37 L.M.
78		153A-335 L.M.
79		159-32 L.M.
80	2	115D-15 L.M.
	3	115C-37 L.M.
81	1	148-4.1 note, 148-37 note
82		160A-58.1 L.M.
84		160A-184 L.M.
85	1	90-21.14
86	1	90-277
88	1	1-272
	2	1-273
	3	48-4
	4	48-12
	5	48-15
	6	48-26
	7	7A-246
	8	7A-251
89	1	105-24
90		115C-302 L.M.,
90		115C-316 L.M.
92		160A-303 L.M.
94	1	90-2
	2, 3	58-50-25
	4, 5	58-65-35
	6	88A-5
	7	90-4
	8	90-5
	9	90-6
	10	90-7
	11	90-9
	12	90-11
	13	90-13
	14	90-14.1
	15	90-15
	16	90-15.1
	17	90-16
	18, 19	90-18
	20	90-18.1
	21	90-18.2
	22	90-21
	23	90-21.22
	24	90-85.3
	25	90-85.21
	26, 27	90-101
	28	90-171.23
	29	90-171.37
	30	90-178.2
	31	90-178.4
	32	110-91
	33	130A-403
	34	143-509
	35	143-514
	36	148-19
97	1	143-341
98	1	163-9
	2, 3	163-9 note
99	1	131E-97.1
100	1	22B-3
102	1	1-110
103	1	17E-1
	2	17E-2
	3	17E-3
	4, 5	17E-4
	6	17E-6
	7	17E-7
	8	17E-8
	9	17E-9
	10	17E-12
106		15-12 L.M., 160A-265 L.M.
107		115C-37 L.M.
108	1	7A-39.15
	2	7A-39.1
109	1	20-88
	2	20-96
	3	20-118
	4	20-118.1
	5	20-183.11 Repealed
111	1	143-138

Ch.	Sec.	1995 General Statutes
111	2	42-42
	3	42-43
	4	143-138 note
112		28A-13-3 L.M.
114	1	87-39
	2	87-40
	3	87-43.4
	4	87-47
	5	87-39 note
	6	87-43.3
115	1	7A-29, 53-255, 53-256 to 53-272
116	1	115C-290.2
	2	115C-290.3
	2.1	115C-290.4
	3	115C-290.5
	4	115C-290.6
	5	115C-290.7
	6	115C-290.8
	7	115C-290.9
	8	115C-290.4 note
117	1	143B-372.1 to 143B-372.3
	2	143B-371, 143B-372 Repealed
	3	143B-372.1 note
120		115C-302 L.M., 115C-316 L.M.
121	1	58-35-85
122	1	127A-19
123	1	143-347 Repealed
	2	130A-4
	3	130A-277
	4	113A-105
	5	130A-33.31
	6	130A-452
	7	130A-444
	8	130A-447
	9	143-215.107
	10	130A-440
	11	130A-228 Repealed 130A-229 Repealed
	12	130A-247
	13(a)-(d)	130A-248
	14	130A-250
	15	130A-23
	16	90-210.25A
124		153A-357 L.M., 160A-417 L.M.
125		143-128 L.M., 143-129 L.M., 143-131 L.M., 143-132 L.M.
127	1	93A-11
128		115C-37 L.M.
129	1	53-1
	2	53-18
	3	53-19
	4, 5	53-20
	6	53-26
129	7	53-37
	8	53-42
	9	53-43
	10	53-46
	11	53-46.1
	12	53-54
	13	53-62
	14	53-63
	15	53-77.1A
	16	53-78
	17	53-91 Repealed
	18	53-91.2, 53-91.3
	19	53-92.1
	20	53-93.1
	21	53-99
	22	53-105
	23	53-106
	24	53-114
	25	53-125
	26	53-141
	27	53-145
	28	53-153
	29	53-188
	30	53-206
	31	53-229 Repealed
	32	53-230
	33	53-231
	34	53-232.17
	35	53-234
	36	53-235
	37	53-240
	38	53-241
	39	53-248
	40	53-252
	41	53-253
	42	53-272
130	1	115C-84
131	1	143-260.10G
	2	143-260.10G note
133		160A-217 L.M.
135	1	146-22.2 note
136	1	143-57.1
	2	143-57.1 note
	3	143-57.1
	4	143-57.1 note
137	1	93-12
140	1	122C-268.1
	2	122C-269
141	1	126-1.1
	2	126-1A Repealed
	3	126-5
	4	126-4
	5	126-5
	6	126-7
	7	126-34.1
	8	126-34.2
	9	126-7.1
	10	126-7.2
142	1	53-17.2
144		18B-300 L.M.

Ch.	Sec.	1995 General Statutes
145	1	150B-23.1
146	1	89C-25
147	1	11-7.1
148	1	18B-600
149	1	55-7-40 to 55-7-44, 55-7-46 to 55-7-49
151		132-10
153	1	36A-2
154	1	160A-265 L.M.
	2	115C-518 L.M.
	3	115D-15 L.M., 153A-158 L.M., 160A-274 L.M.
155	1	53-176
156	1	20-305.1
157	1	135-40.7A
	2	135-40.7B
	3	90-338
	4	90-330
158	1	1-120.2
	2	58-84-1 L.M., 160A-443 L.M.
160		
161	1	31-5.5
163	1	20-16.2
	2	20-79.7
	3	20-82 Repealed
	4	20-118
	5	20-297
	6	20-88
	7	20-135.2B
	8, 9	20-141.3
	10	20-183.2
	11	20-183.8C
	12	20-183.12 Repealed
	13	20-305
	14	136-66.1
	15	136-92
	16	47-108.11
165		58-84-1 L.M.
166	1	7A-343.1
	2	147-45
167	1	136-28.1
168	1	20-130.1
169	1	14-399 L.M.
	2	20-162 L.M., 20-162.1 L.M.
	3	143-135 L.M.
171		128-21 L.M.
174	6	163-111 L.M.
175		143-135 L.M.
176		14-247 L.M.
177	1	58-62-16
178	1(a)	58-6-25 note
	2(a)	62-302 note
179	1	143B-181.9A Repealed
180	1	120-99
	2	120-100
	3	120-101
	4	120-99 note, 120-100 note
181	1	113-291.2
182	1	131E-165
	2	131E-166
183	1, 2	113A-134.1
	3	113A-134.2
	4	113A-134.3
184	1	143-215.31
185	1	1-538.2
	2	14-72
	3	14-72.1
186	1-3	90-89
	4	90-90
188	1	90-154
	2	90-154.1
	3	90-154.3
190	1	41-1 to 41-22
	2, 3	41-18
191	1	20-4.01
	2	20-166.1
	3	20-179
	4	20-279.4 Repealed
	5	20-279.5
	6	20-279.11
	7	20-279.31
	8	20-42
192	1	115D-2.1
193	1	58-1-5
	2	58-1-15
	3	58-1-25
	4, 5	58-1-35
	6	58-2-50
	7	58-2-52
	8	58-2-225 Repealed, 58-5-60 Repealed, 58-5-65 Repealed
	9	58-3-50
	10	58-3-100
	11	58-5-63
	12	58-5-70
	13	58-7-21
	14	58-7-30
	15, 16	58-7-31
	17	58-7-75
	18	58-7-150
	19	58-7-177
	20	58-9-2
	21	58-12-11
	22	58-12-35
	23	58-12-45
	24	58-14-15
	25	58-16-5
	26	58-19-25
	27	58-19-35
	28	58-21-40
	29	58-24-100
	30	58-28-5
	31	58-30-75
	32	58-30-300
	33	58-31-60
	34	58-34-2
	37	58-41-50

Ch.	Sec.	1995 General Statutes
193	38	58-47-5
	39	58-47-10
	40	58-49-5
	41	58-50-30
	42	58-50-65
	43	58-51-115
	44	108A-69
	45	58-57-5
	46	58-58-110
	47, 48	58-62-41
	49	58-63-25
	50	58-63-35
	51	58-63-50
	52	58-64-33
	53	58-64-55
	54	58-64-70
	55	58-65-166
	56	58-65-172
	57	58-66-30
	58	58-66-35
	59	58-67-50
	60	58-68A-1
	61-63	58-68A-10
	64	97-93
	65	58-6-7
	66	143-215.94I
	67	58-1-5 note, 58-1-15 note, 58-1-25 note, 58-1-35 note, 58-2-50 note, 58-2-52 note, 58-3-50 note, 58-3-100 note, 58-5-63 note, 58-6-70 note, 58-7-21 note, 58-7-30 note, 58-7-31 note, 58-7-75 note, 58-7-150 note, 58-7-177 note, 58-9-2 note, 58-12-11 note, 58-12-35 note, 58-12-45 note, 58-14-15 note, 58-16-5 note, 58-19-25 note, 58-19-35 note, 58-21-40 note, 58-24-100 note, 58-28-5 note, 58-30-75 note, 58-30-300 note, 58-31-60 note, 58-34-2 note, 58-41-50 note, 58-47-5 note, 58-47-10 note, 58-49-5 note, 58-50-30 note, 58-50-65 note, 58-51-115 note, 58-57-5 note, 58-58-110 note, 58-62-41 note, 58-63-25 note, 58-63-35 note, 58-63-50 note, 58-64-33 note, 58-64-55 note, 58-64-70 note, 58-65-166 note, 58-65-172 note, 58-66-30 note, 58-66-35 note, 58-67-50 note, 58-68A-1 note, 58-68A-10 note, 97-93 note, 105-228.4 note, 108A-69 note, 143-215.94I note
194	1, 2	106-549.15
	3	106-549.17
	4	106-549.18
	5	106-549.19
	6	106-549.22
	7	106-549.23
	8	106-549.25
	9	106-549.26
	10	106-549.27
	11	106-549.28
	12	106-549.39
195	1	20-43
196	1	20-1 L.M.
	4	160A-184 L.M.
197	1	163-227.2 L.M.
	2	163-155 L.M.
198		143-128 L.M., 143-129 L.M., 143-131 L.M., 143-132 L.M.
199	1	115C-517
200		115C-521 L.M.
201		115C-518 L.M., 160A-265 L.M.
202	1	143-215.67
203		160A-265 L.M.
204	1	7A-27
205	1	131E-192.2
	2	131E-192.11
206	1	15A-402
207	1	162A-5.1
	2	162A-4
	3	162A-5
208	1	58-57-5
209	1, 2	113-294
	3	113-135
210	1	14-138.1
	2	14-140.1
211	1	136-82
213	1	1C-1820 to 1C-1834
	2	1C-1820 to 1C-1834 note
214	1	95-25.5
	2	108A-14
216	1	62-36A
217	1	95-107
	2	95-110.5
218	1	143-129 L.M.
	2	143-131 L.M.
219	1	143-135 L.M.
	3	143-135 L.M.
221		131E-9 L.M.
222	1	53B-5
	2	53B-8
223	1	58-50-30
	2	58-65-1
224	1	18B-1006
225	1	36A-145 to 36A-148

Ch.	Sec.	1995 General Statutes
225	2	65-9
226	1	10A-4
	2	10A-6
	3	10A-13
	4	10A-12
227	1	105A-2
228	1	130A-144
229	1	135-38
	2	135-38 note
230		160A-36 L.M.
232	1	25-3-101 to 25-3-120, 25-3-201 to 25-3-207, 25-3-301 to 25-3-312, 25-3-401 to 25-3-420, 25-3-501 to 25-3-506, 25-3-601 to 25-3-605
	2	25-4-101 to 25-4-108, 25-4-109 Repealed, 25-4-110, 25-4-111, 25-4-201 to 25-4-214, 25-4-301 to 25-4-303, 25-4-401 to 25-4-407, 25-4-501 to 25-4-504
	3	25-1-201
	4	25-1-207
	5	25-2-511
233	1	Repealed
	2	148-18
234	1	20-286
235	1-3	32-27
	4	36A-136
	5	28A-22-5
	6	35A-1251
	7	35A-1252
	8	35A-1251
	9	35A-1116
	10	37-22
	11	37-30, 37-31, 37-33, 37-35
236	1	164-35 to 164-45
	2	164-38
	3	164-36 note, 164-43 note
237	1	45-81
	2	45-82.1
238	1	58-50-130
	2	143-622
	3	143-626
	4	143-632
	5	58-50-130 note, 143-622 note, 143-626 note, 143-632 note
239	1	106-568.8
240	1	50-20
241	1	14-313
	2	14-313 note
242	1	143-138
	2	143-138 note
243	1	163-31, 163-32, 163-35, 163-46, 163-82.6, 163-82.17, 163-82.24, 163-106, 163-111, 163-122, 163-153, 163-173, 163-226.3, 163-227, 163-227.2, 163-230.1, 163-234, 163-278.22, 163-278.40H, 163-280, 163-294.2
244	1	50-21
245	1	50-21
	2	50-20
246	1	14-32.3
247	1	136-18
	2	66-58
248	1	90-202.2
	2	90-202.2 note
249	1	122C-3
	2	122C-112
	3	122C-194 to 122C-200
	4	150B-1
	5	122C-112 note
250	1	1C-1601
251	1, 2	153A-158.1
252	1	24-9.3
253	1	143B-181.1A
254	1	143B-181.15
	2	143B-181.16
	3	143B-181.18
	4	143B-181.20
	5	143B-181.22
	6	131D-32
	7	131E-128
255	1	7A-549
256	1	143-53
257	1	1-360
	2	1-360.1
258	1	14-163.1
259	1	161-50.4
	2	161-50.3
	3	160A-163
260	6	14-234 L.M.
261	1	153A-343
262	1	28A-25-1
	2	28A-25-1.1
	3	29-14
	4	30-15
	5	30-17
	6	30-26
	7	30-29
	8	28A-19-6
263	1	122A-5.11
	2	122A-5.11 note
264	1	130A-35
	2	130A-37
	3	130A-35 note, 130A-37 note
265	1	143-49
	2	143-48

Ch.	Sec.	1995 General Statutes
265	3	143-48.2
	4	143-129.5
266	1	162A-94
	1.1	136-27.1
267	1, 1.1	53-92.1
268	1	130A-131.16, 130A-131.17
269	1	115D-4 note, 148-22.1 note
270	1	96-13
271	1	62-36A
272	1	115C-238.1
	2	115C-238.2
	3	115C-238.3
	4	115C-238.6
	5	115C-238.1 to 115C-238.3 note, 115C-238.6 note
274	1	143-135
275	1	1A-1-4
	2	7A-305
276	1	168-4.2
277	1	8B-8
278	1	135-40.2
	2	135-40.11
280	1	131D-2
281	1	14-27.7A
283	1	20-149
	2	Repealed
284	1	96-13
285	1	130A-334 to 130A-339, 130A-342, 130A-343
	2	20-151 Repealed
287		115D-4.1 note, 116-11 note
288	1	115D-4.1
	2	115D-5
	3	116-11
289		115C-11 note
290	1	15A-531
	2	15A-540
	3	15A-544
	4	15A-547.1
291	1	1-50
	2	1-50 note
292	1, 2	45-37
	3	47-46.2
	4	47-46.3
	5	45-37
	6	45-37.2
293	1, 2	115C-391
294	1	28A-28-1 to 28A-28-7
295	1	143-64.17
	2	143-64.17B
	3	115C-47 note, 115C-521 note, 143-64.17B note
296	1	53-64
297	1	90-470
298	1	108A-47
299	1	15A-1002
299	2	122C-62
304	1	7A-109 note
	2	14-402 note
305	1	122C-147
306		128-21 L.M., 143-166.50 L.M.
308	1	38A-1 to 38A-4
	2, 3	38A-1 note
309	1	8C-1-702
	2	1A-1-9
	3	1A-1-9 note
310	1	143B-431
	2	153A-376
	3	160A-456
311	1	130A-26 Repealed
	2	130A-26A
312	1	90-210.29A
313	1	35A-1370 to 35A-1382
314		113-271 L.M.
315	1	163-278.7
316	1	50-20 note
317	1	108A-64
318	1	58-10-1, 58-10-20 to 58-10-45, 58-10-55 to 58-10-65
	2	58-12-2
	3	58-12-4
	4	58-12-6
	5	58-12-11
	6	58-12-40
	7	58-12-60
	8	58-10-1 note
319	1	50-16.1 to 50-16.3 Repealed, 50-16.5 Repealed, 50-16.11 Repealed
	2	50-16.1A, 50-16.2A, 50-16.3A
	3	50-16.4
	4	50-16.6
	5	50-16.7
	6	50-16.8
	7	50-16.9
	8	50-11
	9	50-13.4
	10	50-19
	11	52B-7
	12	50-11 note, 50-13.4 note, 50-16.1A note, 50-16.2A note, 50-16.3A note, 50-16.4 note, 50-16.6 to 50-16.9 note, 50-19 note, 52B-7 note
321	1	130A-309.10
	2	130A-309.10 note
322	1	53-219 to 53-224.8 Repealed
	2	53-224.9 to 53-224.31, 105-102.3

Ch.	Sec.	1995 General Statutes
324	1.1	7A-95 note, 7A-133 note, 7A-198 note, 7A-312, 7A-346.1 note, 7A-450 note, 7A-586 note, 7A-649 note, 7A-771 note, 15A-1343 note, 20-9 note, 20-16.5 note, 20-79.7 note, 90-85.27 note, 113-154 note, 115C-12 note, 115C-105.1 note, 115C-106 note, 115C-238.7 note, 115C-238.12 note, 115C-290.4 note, 115C-295 note, 115C-336 note, 115C-337 note, 115D-5 note, 116C-1 note, 120-123 note, 120-131.1 note, 121-12 note, 122C-147 note, 130A-5 note, 130A-347 note, 131D-10.6A note, 134A-1 note, 136-16.6 note, 136-44.5 note, 136-140.1 note, 138-5 note, 143-6.1 note, 143-10.7 note, 143-11 note, 143-15.2 note, 143-15.3 note, 143-15.3A note, 143-16.3 note, 143-23 note, 143-170.1 note, 143-408.1 note, 143-613 note, 143B-138 note, 143B-139.4 note, 143B-150.5 note, 143B-168.10 note, 143B-168.12 note, 143B-273.15 note, 143B-336.1 note, 148-32.1 note, 148-37 note, 148-41 note, 163-136 note
	5.2(a)	143-15.2
	(b)	143-15.3A
	5.3	143-15.3A note
	6.10	143-170.1
	8.1(a)	120-131.1
	10(a)	143-11
	(b)	143-11 note
	10.2	143-10.7
	11	143-6.1 note
	12	121-12
	12.2	143-408.1 to 143-408.7 Repealed
	14	163-136
	15.1	143-613 note
	15.12(a)	116C-1 note
	(b)	116C-1
	16	115D-31
	16.4	115D-5
	17(b)	115C-337
324	17.1	115C-336 note
	17.2	115C-238.12 to 115C-238.20 Repealed
	17.4	115C-336
	17.5	143-23 note
	17.8(a)	115C-295 note
	(b)	115C-238.7 note
	17.9(a)	115C-295 note
	(i)	120-123, 120-123 note
	17.12(a)	115C-105.1 note
	(b)	115C-105.1
	17.13(a)	115C-290.4 note
	(b)	115C-290.4
	17.15(a)	115C-12
	(b)	115C-12 note
	18.1	136-140.1
	18.2	136-16.6
	18.7(a)	20-79.7
	(b)	20-79.7 note
	18.12	136-44.5 note
	18.14	93B-1 note, 136-28.1 note, 143-52 note, 143-53 note, 143-58 note, 143-128 note, 143-129 note
	18.17	20-9 note
	18.28	136-12 note
	19	143B-273.15
	19.3	15A-1343 note
	19.9(a)-(e)	148.41
	(f)	148-32.1
	19.10(a), (b)	148-37
	(c)	148-37 note
	21.1(a)	7A-312
	(b)	7A-312 note
	21.5	7A-346.1 note
	21.8	7A-450 note
	21.9(a), (b)	7A-773 note
	(c)	7A-771
	(d)	7A-772
	(e)	7A-773
	21.10	7A-95, 7A-198 note
	21.11	7A-133 note
	21.12	7A-586 note
	21.13	7A-586
	23	143-15.3 note
	23.1	143B-139.4 note
	23.5	143B-138 note, 143B-150.5 note
	23.12,	143B-168.10 note
	23.13,	
	23.14(h)	90-85.27 to 90-85.31 note
	23.20	7A-649 note, 115C-106 note, 122C-147 note, 130A-5 note, 134A-1 note, 143-18 note

Ch.	Sec.	1995 General Statutes
324	23.25	131D-10.6A
	23.32	138-5 note
	23.34	143B-138 note
	26.5(a), (b)	20-16.5 note
	26.7A	130A-347
	26.8C	113-154 note
	26.8D	143-16.3 note
	26.11	143B-336.1
	27A	143B-168.10 note
	27A.1	143B-168.12
	28.1	143-1 note
	28.3	7A-133 note, 7A-198 note, 7A-346.1 note, 7A-450 note, 7A-649 note, 15A-1343 note, 20-9 note, 20-16.5 note, 90-85.27 note, 113-154 note, 115C-106 note, 115C-295 note, 116-30.01 note, 120-123 note, 122C-147 note, 130A-5 note, 131D-10.6A note, 134A-1 note, 136-44.5 note, 138-5 note, 143-1 note, 143-6.1 note, 143-15.3 note, 143-16.3 note, 143-18 note, 143-23 note, 143-613 note, 143B-138 note, 143B-139.4 note, 143B-150.5
	28.4	7A-95 note, 7A-312, 7A-586 note, 7A-771 note, 20-79.7 note, 115C-12 note, 115C-105.1 note, 115C-106 note, 115C-238.7 note, 115C-238.12 note, 115C-290.4 note, 115C-336 note, 115C-337 note, 115D-5 note, 116C-1 note, 120-131.1 note, 121-12 note, 130A-347 note, 131D-10.6A note, 136-16.6 note, 136-140.1 note, 143-10.7 note, 143-11 note, 143-15.2 note, 143-15.3A note, 143-170.1 note, 143-408.1 note, 143B-168.12 note, 143B-273.15 note, 143B-336.1 note, 148-32.1 note, 148-37 note, 148-41 note, 163-136 note
325		105-349 LM
326	1-3	20-79.4
327	1	130A-295.02
	2	130A-310.9

Ch.	Sec.	1995 General Statutes
327	3	130A-310.12
328	1	7A-564
	2	7A-650
	3	7A-523
329	1	105-321
	2	105-321 note, 105-330.5
	3	105-321 note
330	1	15A-1342
	2	143B-475.1
331	1	32A-1
	2-4	32A-2
	5	32A-14.1, 32A-14.10 to 32A-14.12
	6	32A-1 note, 32A-2 note, 32A-14.1 note, 32A-14.10 to 2A-14.12 note
	7	32A-14.1 note
332	1-3	20-118
333		7A-10 note
334	1	115C-16
336	1	122C-57
337		153A-335 L.M.
339	1(a)	153A-343 L.M., 132-6 L.M.
	2	132-9 L.M.
	3(a)	153A-123 L.M.
	4.1(a)	20-97 L.M.
340		105-113.105 to 105-113.109, 105-113.110 Repealed 105-113.110A to 105-113.113
	2	105-113.105 to 105-113.109 105-113.110A to 105-113 note
341		160A-237 L.M.
344	1	90B-6
346	1	165-45 to 165-55
	2	147-69.2
347	1	160A-443
349	1	105-187.3
350	1, 2	105-333
	3	105-130.4
351	1, 2	57C-1-03
	3	57C-2-30
	4	57C-2-41
	5, 6	57C-3-02
	7	57C-3-21
	8, 9	57C-3-32
	10	57C-5-07
	11	57C-6-02
	12	57C-6-01
	13	24-9
	14	24-9.2 Repealed
	15	55B-4
	16	55B-6
	17	55B-13
	18	55B-16
	19	93A-1

Ch.	Sec.	1995 General Statutes
351	20	93A-2
	21	57C-2-01
352	1	14-33
353	1-3	1A-1-30
354	1	153A-301
	2	153A-302
355	1	120-2.2
	2	163-201.2
356	1	6-21.3
357	1	160A-381
358	2(a)	7A-101 note, 7A-102 note 7A-171.1 note, 7A-171.2 note 62-10 note, 120-3 note, 120-3 note, 120-37 note, 147-11 note
	(b)	7A-101 note, 7A-102 note, 20-187.3 note, 126-7 note
	3(a)	7A-38
	(b)	7A-38 note
	4	143-128, 143-132
	5	136-28.6 note
	6	120-195 note
	7(b)	113-291.6 note
	8(a)	97-80 note, 143-296
	(b)	97-80 note
359	1	131E-180.1
	2	131E-180.1 note
360	1(a)	105-228.9
	(b)	105-228.3
	(c)	58-6-7
	(d)	105-228.5
	(e)	105-228.5A
	(f)	105-228.8
	(g)	105-266
	(h)	97-100
	(i)	58-6-25
	2(c)	58-2-131
	(d)	58-2-133
	(e)	58-2-195
	(f)	58-6-5
	(g)	58-7-21
	(h)	58-19-35
	(i)	58-24-135
	(j)	58-48-60
	(k)	58-62-56
	(l)	58-65-105
	(m)	58-67-100
	3(a)	58-6-25
	4(a)	105A-13
361	1	135-18.7
	2	135-74
	3	128-38.2
	4	120-4.31
	5	143-166.30
	6	143-166.50
362	1	15A-622
363		153A-158.1 L.M.
364	3.1	160A-360 L.M.
365		69-25.11 L.M.
366	1	18B-300 L.M.
	2	18B-300
367	1	143-128, 143-132
	2	143-128 note, 143-132 note
	3	44A-26
	4, 5	143-128
	6	143-129
	7	143-132
	8	143-135.8
	9	143-135.25
	10	143-135.26 note
368		108A-25, 108A-27 note
369	1	115C-287.1
	2	115C-325
370	1	105-501
	2	105-275.2
	3	105-134.6
	4	105-130.9
	5	105-130.40
	6	105-151.17
371	1	115C-81
	2	115C-81 note
372	1	18B-301
	2	18B-1006
373	1	115C-332
	2	114-19.2
	3	115C-332 note
374	1	153A-241
375	1	15A-1340.13
376	1	87-52
	2	87-58
	3	87-59
	4	87-61
	5	87-52 note, 87-59 note
377	1	143-215.94V
	2	143-215.94U
	3	143-215.94W to 143-215.94Y
	4	143-215.94A
	5	143-215.94B
	6	143-215.94C
	7	143-215.94D
	8	143-215.94E
	9	143-215.94G
	10	143-215.94K
	11	143-215.94N
	12	143-215.77
	13	143-215.84
	14	143-215.94U note
	15(d)	143-215.94U to 143-215.94Y note
	16	143-215.94V note
378	1	14-7.20
	2-6	105-53
379	1(a)	14-13
	(b)	14-14

Ch.	Sec.	1995 General Statutes
379	3	8-37.1
	4	157-53
	5	165-39
	6	20-165 Repealed
	9	8-77 Repealed
	10	11-11
	11	147-15.1 Repealed
	13	147-2
	14(a)	1-339.50
	(b)	46-10
	(c)	62-62
	(d)	162-13
	(e)	163-24
	15	22-3 Repealed
	17	116-199 Repealed, 116-200 Repealed
	18.1	20-132
	18.2	20-137 Repealed
	18.3	66-8 Repealed
	18.4	66-30 to 66-34 Repealed
	18.5	66-59 to 66-64 Repealed
382	1	55B-14
	2	55B-2
383	1	95-232
384	1	159I-8
385	1	153A-225
386	1	115C-391
	2	115C-276
	3	115C-276 note, 115C-391 note
387	1	24-2.3
	2	24-11
388	1	132-1
	2	132-6
	3	132-6.1, 132-6.2
	4	132-9
	5	132-10
	6	6-19.2 Repealed
	7	132-6 to 132-6.2 note
389	1	1-75.4
	2, 3	1A-1-4
	4	1A-1-28
	5	1A-1-44.1
390	1	105-430
	2	105-434 to 105-449.35 Repealed
	3	105-449.60, 105-449.61, 105-449.65 to 105-449.77, 105-449.80 to 105-449.88, 105-449.90 to 105-449.102, 105-449.105 to 105-449.110, 105-449.115 to 105-449.122, 105-449.125 to 105-449.127, 105-449.130, 105-449.131 to 105-449.139
	4	105-430 note, 105-449.1 note
	5	105-430 note, 105-449.1 note, 105-449.80 note

Ch.	Sec.	1995 General Statutes
390	6	105-430 note, 105-449.1 note
	7	105-449.80 note
	8	105-449.90 note
	9	105-430 note, 105-449.1 note, 105-449.60 note, 105-449.130 note
	10	105-430 note, 105-449.1 note
	11	20-88.01
	12	75-81
	13	75A-3
	14	105-164.13
	15	105-253
	16	105-449.38
	17	105-449.43
	18	105-449.47
	19	119-15
	20	119-16 Repealed
	21	119-16.1 Repealed
	22	119-16.2
	23	119-18
	24	119-19
	25	119-22 Repealed
	26	136-41.1
	27	136-176
	28	143-215.3A
	29	150B-2
	30	105-187.3
	31	105-187.6
	32	105-187.7
	33	105-187.8
	34	20-85
	35	105-449.44
	36	105-236
391	1	7A-571
	2	7A-572
	3	122C-421
392	1	113-333
393	1	126-5
	2	126-5 note
394	1	20-50
395	1	90-21.24 note
	2	90-21.24 to 90-21.36
	3	90-21.24 note
396	1	131E-129
397	1	86A-22
398	1	14-415.10 to 14-415.23
	2	14-269
399	1	115D-15 L.M., 153A-158 L.M., 160A-274 L.M.
	2	153A-158 L.M.
	3	115D-14 L.M., 115D-15 L.M., 115D-20 L.M., 160A-274 L.M.
400	1	55A-5-01
	2	55A-7-21
	3	55A-7-23
	4	55A-10-03

Ch.	Sec.	1995 General Statutes
400	5	55A-11-01
	6	55A-11-02
	7	55A-11-06
	8	55A-11-08
	9	55A-15-20
	10	55A-15-31
	11	55A-15-33
	12	55A-17-01
	13	55-11-09
401	1	28A-13-3
402	1	143-341
403	1(a)	143-545 Repealed
	(b)	143-545A
	2(a)	143-546 Repealed
	(b)	143-546A
404	1	18B-1105.1
	2	18B-902
	3	18B-1100
	4	105-113.74
405	1	90-2
	2	90-6
	3	90-12
	4	90-14
	5	90-14.3
	6	90-14.9
	7	90-14.11
	8	90-14.13
406	1	135-40.7A
	2	135-40.7B
	3	58-50-30
	4	58-65-1
	5	122C-3
407	1	15A-286 to 15A-298
	2	114-15
408	1	53-99.1
	2	54B-63.1
	3	54C-60.1
409	1	113A-121.1
410	1	105-187.5
411	1	7A-544
412	1	159B-2
	2	159B-3
	3	159B-4
	4	159B-8 Repealed
	5	159B-9
	6	159B-10
	7	159B-11
	8	159B-12
	9	159B-13
	10	159B-14
	11	159B-15
	12	159B-16
	13	159B-17
	14	159B-18
	15	159B-24
	16	159B-25
	17	159B-27
	18	159B-29
	19	159B-30.1
	20	159B-34

Ch.	Sec.	1995 General Statutes
412	21	159B-42
	22	159B-43
	23	159B-43.1
	24	159B-44
	25	159B-45
	26	159B-46
	27	159B-47
	28	159B-48
	29	159B-2 note
413	1	131E-155.1
414	1	89F-1 to 89F-25
	2	89F-10 note
	3	89F-4 note
415	1	150B-21
	2	150B-21.4
	3	150B-21.26 to 150B-21.28
	4	150B-21.11
	5	150B-21.12
	6	120-30.45
	7	120-30.49
	8	120-36.8
416	1	89C-19.1
	2	83A-13.1
417	1	53-47
418		58-68A-1 note
419	1	42-59 to 42-76
	1.1	42-25.6
	2	42-59 note
420	1	106-800 to 106-803
421	1	58-88-5
422	1-4	130A-55
	5	130A-56
423	1	163-128
	2	163-132.1 to 163-132.3, 163-132.5C
	3	163-132.3 note
	4	153A-19
424	1, 2	49-14
425	1	14-113.5
	2	14-113.6
427	1	84A-1 to 84A-8
428	1	130A-101
	1.1	130A-12
429	1	15A-1341
	2	NC Const., Art. XI, § 1
	3, 4	NC Const., Art. XI, § 1 note
430	1	96-5 note
431	1	84-1
	2	84-2
	3	84-2.1
	4	84-4
	5	84-4.1
	6	84-4.2
	7	7A-97
	8	84-16
	9	84-17
	10	84-18
	11	84-18.1

Ch.	Sec.	1995 General Statutes
431	12	84-19
	13	84-20
	14	84-21
	15	84-22
	16	84-23
	17	84-24
	18	84-28
	19	84-28.1
	20	84-28.2
	21	84-29
	22	84-31
	23	84-32
	24	84-33
	25	84-34
	26	84-37
432		132-1 L.M.
433	1	20-79.4
	2, 3	20-79.7
	4	20-81.12
	4.1	20-79.4
434	1	153A-301
	2	136-98
435	1	115C-471
436	1	80-11.1
	2	80-12
437	1	7A-101 note, 7A-102 note, 7A-171.1 note, 7A-171.2 note, 20-187.3 note, 62-10 note, 120-3 note, 120-37 note, 126-7 note, 147-11 note
	2(a)	7A-38
	(b)	7A-38 note
	3	136-28.6 note
	4	120-195 note
	5	113-291.6 note
	6(a)	97-80 note, 143-296
	(b)	97-80 note
438	1	920-1-37
	2, 3	920-1-37 note
439	1	143-215.31
440	1	120-70.2
441		1A-1-4 L.M.
443	1	121-35
	2	121-35 note
	3	47B-3
	4	105-277.4
444	1	50-13.9
445	1	143-437
	2	143-442
	3	143-443
	4	143-448
	5	143-456
	6, 7	143-460
	8	143-465
	9	143-466
	10	143-469
446	1	15A-1343.1
447	1, 2	136-28.6
448	1	15A-544

Ch.	Sec.	1995 General Statutes
449	1	131D-3 Repealed
	2	131D-4 Repealed
	3	131D-4.1 to 131D-4.3
	4	143B-153
	5	131D-4.1 note
450	3	115C-12 note
	4	115C-12
	5-7	115C-81
	8	115C-206
	9	115C-207
	10	115C-208
	11	115C-209
	12	115C-238.2
	13	115C-238.3
	14	115C-238.5 Repealed
	15	115C-238.6
	16	115C-238.42 to 115C-238.47 Repealed
	17	115C-272
	18	115C-285
	19, 20	115C-302
	21	115C-316
	22	115C-318
	24	115C-303 note
	25(a)	115C-238.2 L.M.
451	1	105-164.13
453	1	114-19.3
454	1	105-277.2
	2	105-277.3
	3	105-277.4
	4	105-277.4 note
455	1	115C-47
456	1	143B-313.1, 143B-313.2
	2	113-44.15
	3	105-228.30
	4	143B-311 to 143B-313 Repealed
	5	143B-313.2 note
457	1	48-1 to 48-38 Repealed
	2	48-1-100 to 48-1-109, 48-2-100 to 48-2-102, 48-2-201 to 48-2-205, 48-2-301 to 48-2-306, 48-2-401 to 48-2-407, 48-2-501 to 48-2-504, 48-2-601 to 48-2-607, 48-3-100, 48-3-201 to 48-3-207, 48-3-301 to 48-3-308, 48-3-401, 48-3-402, 48-3-501, 48-3-502, 48-3-601 to 48-3-610, 48-3-701 to 48-3-707, 48-4-100 to 48-4-105, 48-5-100 to 48-5-103, 48-6-100 to 48-6-102, 48-7-100, 48-8-100, 48-9-101 to 48-9-109, 48-10-101 to 48-10-105
	3	7A-289.23
	4	7A-289.27

Ch.	Sec.	1995 General Statutes
457	5	7A-289.33
	6	7A-660
	7	130A-93
	8	130A-108
	9	163-82.16
	11	48-1-100 note, 48-2-100 note, 48-3-100 note, 48-4-100 note, 48-5-100 note, 48-6-100 note, 48-9-101 note, 48-10-101 note
	12	48-1-100 note, 48-2-100 note, 48-3-100 note, 48-4-100 note, 48-5-100 note, 48-6-100 note, 48-9-101 note, 48-10-101 note
458	1	160A-480.1 to 160A-480.15
	2	120-123
	3	160A-460
	5	132-1 L.M.
	6	18B-1006 note, 105-164.14 note, 120-123 note, 160A-460 note, 160A-480.1 note
	7	105-164.14
	8	18B-1006
459	1	105-102.6
	2	105-109.1
460	1-3	42-25.9
	4	42-28
	5	42-29
	6	42-36.2
	7	42-36.1A
	8	42-25.7
	9	44A-2
461	1	160B-2.1, 160B-2.2
	2	160B-4
	3	160B-7
	4	160B-16 to 160B-21
	5	153A-405
	6	160A-20
	7	162A-86
	8	162A-89
	9	159-7
	10	159-44
	11	159G-3
	12	159I-3
	13	105-164.14
	14	105-228.90
	15	105-273
	16	105-466
	17	105-473
	18	136-41.1
	19	153A-305 note
	20	105-164.14 note, 105-228.90 note, 105-273 note, 105-466 note, 105-473 note, 136-41.1 note, 153A-405 note, 159-7 note, 159-44 note, 159G-3 note, 159I-3 note, 160A-20 note, 160B-2.1 note, 160B-4 note, 160B-7 note, 160B-16 note, 162A-86 note, 162A-89 note
462	1	90-21.1 note, 90-21.6 to 90-21.10
	2	7A-523
	3	7A-451
	4	7A-675
	5	108A-28.1, 90-21.6 note
463	1-3	96-9
	4-6	96-10
464	1	163-107
	2	163-107 note
465	1	158-42
466	1	18B-101
	2	18B-500
	3, 4	18B-501
	5	18B-603
	6	18B-900
	7	18B-902
	8	18B-1000
	9	18B-1000 note
	10	18B-1001
	11, 12, 12.1	18B-1006
	13	18B-1007
	14	18B-1301
	15	18B-1303
	16	105-113.68
467	1	7A-101 note, 7A-102 note, 7A-171.1 note, 7A-171.2 note, 20-187.3 note, 62-10 note, 120-3 note, 120-37 note, 126-7 note, 147-11 note
	2(a)	7A-38
	(b)	7A-38 note
	3	120-195 note
	4	113-291.6 note
	5(a),	97-80 note, 143-296
	(b)	97-80 note
468	1	105-29
	2	105-241.1
469		153A-277L.M.
470	1	115D-12
	2	115D-19
	3, 4	115D-2.1
471	1	97-93
	2	58-2-145
	3	58-30-5
	4, 5	58-30-10
	6	58-6-25 note
472	1	105-164.14
473	1	20-127
	2	20-183.3

Ch.	Sec.	1995 General Statutes
473	3	20-183.7
474	1	105-113.45
	2	105-113.52
475	1	14-410
476	1	47E-1 to 47E-10
477	1	105-164.4
	2, 3	105-164.13
478	1	143-458
	2	106-65.28
479	1	53-12
	2	53-13
	3	53-17
	4	54B-37.1
	5	54C-35
	6	54C-36
	7	54C-40
480	1	44A-2
	2	44A-6
	3	20-305
	4, 5	20-305 note
481	1	143B-138 note
482	1	93E-1-2.1
	2	93E-1-3
	3	93E-1-3.1
	4	93E-1-4
	5	93E-1-5
	6	93E-1-6
	7	93E-1-7
	8	93E-1-11
	9	93E-1-12
	10	93E-1-13
	11	93E-1-14
	12	93E-1-2 Repealed
483	1	58-3-121
	2	58-3-121 note
484	1	143-215.108 note
	2	143-215.108
	3, 4	143-215.108 note
	5	143-215.3
485	1	136-89.159 to 136-89.167
	2	136-89.159 note
486	1	33B-1 to 33B-22
	2	32A-1
487	1	14-403
	2	14-404
	3	14-415.1
	4	14-409.1 to 14-409.9 Repealed
488	49(a), (b)	158-8.1
490	1	143B-128
	2	116-74.7
	3	143B-181
	4	122D-4
	5	120-150
	6	74D-4
	7	143B-132
	8	140-5.13
	8.1	143B-59

Ch.	Sec.	1995 General Statutes
490	9	53-92
	10	143B-168.4
	11	90-139
	11.1	90-140
	12(a)	143-151.9
	(b)	120-123
	13	88-13
	14	15B-3
	15	17C-3
	16	90-354
	17(a)	115E-4
	(b)	120-123
	18	143B-283
	19	143B-426.25
	20	58-78-1
	21(a)	58-47-20
	(b)	120-123
	22	58-68-15
	23	143B-216.21
	24	122A-4
	25	122E-4
	26	143B-392
	27	143B-407
	28	143B-418
	29	120-56
	30(a)	159-3
	(b)	120-123
	31	104F-4
	32	104G-5
	33(a)	131E-211
	34	143B-148
	35	106-266.7
	36	20-305.4
	37(a)	113-77.8
	(b)	120-123
	38	143B-403.2
	39	74C-4
	40	143B-426.24
	41	58-32-1
	42	143B-426.9
	43	143B-30.1
	44	115C-489.4
	45	116-233
	46	143B-426.31
	47	113-315.25
	48	17E-3
	49	106-727
	50	143-492
	51	84-28.1
	52	143-135.25
	53	143B-91
	54	143B-452
	55	143B-270
	56	135-39
	57	135-6
	58	115C-363.23
	59	90C-5
	60	143B-350
	61	116-37.1
	62	143B-133

Ch.	Sec.	1995 General Statutes
490	63	116-243
	64	143-241
491	1	105-163.011
	2	105-163.011 note
494	1	14-202.2
495	1	105-130.41
	2	105-151.22
	3	105-130.41 note, 105-151.22
	4	105-130.41 note, 105-151.22
	5	105-130.41 note, 105-151.22 note
496	1	20-17.6
	2-7	20-179
	8	20-179.2 Repealed
	9	20-179.4
	10	122C-142.1
	11, 12	20-17.6
	13	122C-142.1
	13.1(a)	18B-1006
497	1, 2	115C-47
498	1	122C-112
499	1	143-650 to 143-658
500	1	7A-38.1, 7A-38.2, 7A-38.3
	2	7A-38
	3	7A-38 Repealed
	5	7A-38 note, 7A-38.1 to 7A-38.3 note
501	1	115C-49 Repealed
	2	147-69.2
	3	153A-141 Repealed
	4	160A-197 Repealed
	5	147-69.2 note
502	1	130A-294
	2	130A-301.2
	2.1	47-29.1
	3	130A-294 note
503	1	15A-531
	2, 3	15A-544
504	1	143-215.22B
	2	7A-29
	3	74-56
	4	104E-5
	5	104F-4
	6	113-315.5
	7	113A-105
	8	130A-22
	9	130A-309.10
	10	143-215.4
	11	143-215.96
	12	150B-21.5
505	1	58-36-1
	2	58-36-15
	3-8	58-36-100
	9	58-36-15 note
506	1, 2	20-179.3
	3-5	20-13.2
	6	20-138.3
506	7	20-17
	8	20-19
	9	20-138.7
	10	15A-401
	11-13	20-179
	14	75A-10
	15	15A-401 note, 20-13.2 note, 20-17 note, 20-19 note, 20-138.3 note, 20-138.7 note, 20-179 note, 20-179.3 note, 75A-10 note
507	1.1	7A-45.1 note, 7A-60 note, 7A-65 note, 7A-102 note, 7A-133 note, 7A-149 note, 7A-171.1 note, 7A-200 note, 7A-790 note, 14-33 note, 14-33.2 note, 14-34 note, 14-34.2 note, 14-34.5 note, 14-34.6 note, 14-190.16 note, 14-190.18 note, 14-250 note, 14-415.1 note, 14-415.11 note, 14-415.13 note, 14-415.16 note, 14-415.19 note, 15A-1340.14 note, 15A-1340.17 note, 15A-1340.23 note, 15A-1343.1 note, 18B-200 note, 18B-500 note, 20-39 note, 20-79.7 note, 20-131.1 note, 58-2-215 note, 58-3-173 note, 58-6-7 note, 58-6-15 note, 58-7-150 note, 58-7-155 note, 58-18-25 note, 58-21-20 note, 58-22-70 note, 58-33-125 note, 58-36-70 note, 58-50-130 note, 58-51-15 note, 58-51-80 note, 58-65-55 note, 58-67-55 note, 58-67-160 note, 58-68A-5 note, 58-78-5 note, 58-86-1 note, 58-86-30 note, 58-86-35 note, 58-86-40 note, 58-86-45 note, 58-86-55 note, 58-87-1 note, 58-87-5 note, 58-87-10 note, 63-37.1 note, 63-68 note, 66-58 note, 93B-12 note, 96-4 note, 96-5 note, 96-30 note, 97-80 note, 97-88.2 note, 105-262 note, 105-449.126 note,

Ch.	Sec.	1995 General Statutes
507	1.1	105-503 note, 108A-53 note, 110-902. note, 113-151.1 note, 113-154 note, 113-182 note, 113-291.6 note, 114-17.1 note, 114-19.4 note, 114-19.5 note, 115C-1 note, 115C-12 note, 115C-81 note, 115C-238.41 note, 115C-238.47 note, 115C-302 note, 115D-5 note, 116-74.21 note, 116-143 note, 120-4.22A note, 120-70.100 note, 120-131.1 note, 122C-22 note, 122C-53 note, 122C-119.1 note, 122C-124 note, 126-7.1 note, 126-16 note, 128-4 note, 128-24 note, 128-26 note, 128-27 note, 130A-30 note, 130A-39 note, 130A-247 note, 130A-248 note, 131D-10.2 note, 131D-10.3A note, 131E-175 note, 135-4 note, 135-5 note, 135-40.2 note, 135-40.5 note, 135-40.6 note, 135-40.9 note, 135-65 note, 136-18 note, 136-44.5 note, 143-3.2 note, 143-3.7 note, 143-16.3 note, 143-23 note, 143-138 note, 143-214.7 note, 143-215 note, 143-215.107 note, 143-296 note, 143-610 to 143-613 note, 143B-131.1 note, 143B-131.2 note, 143B-131.8 note, 143B-419 note, 147-11 note, 147-16 note, 148-11 note, 148-29 note, 150B-1 note, 150B-21 note, 150B-21.1 note, 150B-21.9 note, 150B-21.11 note, 150B-21.12 note, 150B-21.15 to 150B-21.17 note, 150B-21.19 note, 150B-21.26 note, 150B-21.27 note, 153A-141 note, 158-8.1 note, 158-15.1 note, 160A-197 note, 163-82.11 to 163-82.13 note, 163-
507	1.1	82.1 note, 163-82.20 note
	6.1	14-250 note
	6.2(a)	18B-500
	(b)	20-39
	(c)	114-17.1 Repealed
	6.3	143-23
	7.1(a)	147-11
	7.4A	7A-65
	7.6(a), (b)	7A-102
	7.7(a), (b)	7A-171.1
	7.8	120-3
	7.9, 7.10	120-37
	7.20(a)	126-7.1
	7.21(a)-(c)	135-40.2
	7.21A(a)	58-87-10
	(b)	58-87-10 note
	(c)	58-78-5
	(d)	58-86-35
	(e)	58-86-40
	(f)	58-86-45
	(g)	58-86-55
	(h)	58-86-30
	(i)	58-86-45 note, 58-86-55 note
	(j), (k)	58-87-1
	(l)	58-87-5
	(m)	58-86-1 note
	7.22(a)	135-5
	(b)	135-65
	(c)	120-4.22A
	(d)	128-24
	(e), (f)	128-27
	7.23(a), (b)	135-5
	(c), (d)	128-27
	7.23A(a), (b)	135-5
	(c)	128-27
	7.23D(a)	128-26
	(b)	135-4
	7.24(a)	135-40.5
	(b), (c)	135-40.6
	7.25	135-40.9
	7.26, 7.27	135-40.6
	7.28(a)-(c)	135-40.2
	7.28B	135-40.6
	8.2	120-131.1
	8.5(g)	96-5 note
	9	143-16.3 note
	11A(a), (b)	58-2-215
	(c)	58-2-215 note, 58-6-7

Ch.	Sec.	1995 General Statutes
507	11A(c)	note, 58-6-15 note, 58-7-150 note, 58-7-155 note, 58-18-25 note, 58-21-20 note, 58-22-70 note, 58-33-125 note, 58-35-5 note, 58-36-70 note, 58-65-55 note, 58-67-160 note, 143-3.7 note
	12(b)	121-9
	12.6(a)	143B-131.1
	(b)	143B-131.2
	(c)	143B-131.8 to 143B-131.10
	(d)	143B-131.1 note
	13.1(a)	66-58
	(b)	66-58 note
	13.2(d)	163-82.11 to 163-82.13 note
	15.1	116-235
	15.7	116-36.4
	15.4	116-36.6
	15.12	116-41.18
	15.15	116-143 note
	15.16	116-30.3
	15.17	116-1
	17.3	115C-1 note, 115C-81 note
	17.5	105-503
	17.6(b)	115C-12 note, 115D-5 note
	17.9(a), 17.9(b)	115C-238.41
	(c)	115C-238.43
	(d)	115C-238.47
	(e), 17.9(f)	115C-238.41 note
	17.13	115C-302
	17.14	115C-81 note
	18	63-68 note
	18.2	136-18
	18.5	136-44.5 note
	18.16	105-449.126
	18.17(a)	20-79.7
	(b)	20-79.7 note
	19	148-37
	19.3(a)	147-16
	19.4	148-29 note
	19.5(b)	14-33
	(c)	14-33.2
	(d)	14-34
	(e)	15A-1332
	(f)	15A-1340.14
	(g)	15A-1340.23
	(h)	15A-1343.1
	(i)	14-34.2
	(j)	14-34.5
	(k)	14-415.1
	(l)	15A-1340.17
	(m)	63-37.1
	(n)	108A-53
507	19.5(o)	14-190.16
	(p)	14-190.18
	19.6(a)	14-34.6
	19.9	122C-22 note, 131E-175 note
	19.12	126-7.1 note, 126-16 note
	21.1(a)	7A-200
	(b)	7A-149
	(c)	7A-133
	(d)	7A-133 note
	(e)	7A-133 note, 7A-149
	(f)	7A-45.1
	(g)	7A-133 note
	(i)	7A-200 note
	21.6(a)	7A-790 to 7A-801
	(b)	7A-790 note
	21.7	7A-60
	22(b), (c)	14-415.19 note
	22.1(a)	14-415.19
	(b)	14-415.13
	(c)	14-415.11
	22.2(a)	14-415.13
	(b)	14-415.16
	23.2	122C-124 to 122C-126
	23.3	122C-119.1
	23.4	122C-53
	23.22	131E-176 note
	23.25(a)	110-90.2
	(b)	114-19.5
	(c)	110-90.2 note
	23.26(a)	131D-10.2
	(b)	131D-10.3A
	(c)	114-19.4
	(d)	131D-10.2 note, 131D-10.3A note
	23A.1(a)	58-3-173
	(b)	58-50-130
	23A.1(c), (d)	58-51-80
	23A.1(g)	58-51-15
	23A.3(a)	143-611
	(b)	143-611 note
	(c)	58-68A-5, 143-610, 143-611
	(d)	143-612 Repealed
	(e)	143-612A
	23A.4	93B-12
	23A.5	143-613
	23A.6(a), (b)	120-195 to 120-203
	25(a)	97-88.2
	(b)	97-88.2 note
	25.5(a)	158-8.1
	(b)	158-8.1 note
	25.6(a)	96-30 to 96-35
	25.9(b), (d)	96-5 note
	25.10(c)	163-82.20

Ch.	Sec.	1995 General Statutes
507	25.10(d)	163-82.1 note
	25.13	97-80 note, 143-296
	26.5(a)	113-152 note
	(b)	113-154
	(c)	113-182
	(d)	113-152 note
	(e)	113-151.1 note
	26.6(a), (c)	113-291.6 note
	26.8(b)	130A-248
	(c)	130A-39
	(d)	130A-30
	(f)	130A-247
	(g)	130A-248
	(h)	130A-248 note
	26.12	158-15.1
	27.2(a)	116-74.21
	(b)	116-74.21 note
	27.3	143B-429 note
	27.4	143-3.2
	27.8(a)	120-70.100 to 120-70.103
	(b)	150B-21.4
	(c)	150B-21.1
	(d)	150B-21.2
	(e)	150B-21.3
	(f)	150B-21.9
	(g)	150B-21.11
	(h)	150B-21.12
	(i)	150B-21.15 Repealed
	(j)	150B-21.16
	(k)	150B-21.17
	(l)	150B-21.19
	(m)	150B-1
	(n)	96-4
	(o)	97-80
	(p)	105-262
	(q)	143-214.7
	(r)	143-138
	(s)	143-215, 143-215.107
	(t)	120.70.100 note
	(u)	148-11
	(v)	150B-21
	(w)	150B-21.26
	(x)	150B-21.27
	(y)	150B-21.12
	27.8(z)	96-4 note, 97-80 note, 105-262 note, 120-70.100 note, 143-138 note, 143-214.7 note, 143-215 note, 143-215.107 note, 148-11 note, 150B-1 note, 150B-21 note, 150B-21.1 to 150B-21.4 note, 150B-21.9 note, 150B-21.11 note, 150B-21.12 note, 150B-21.15 note, 150B-21.16 note, 150B-21.17 note, 150B-21.19 note, 150B-21.26 note, 150B-21.27 note
	27.10	113A-1 to 113A-10 note, 113A-50 to 113A-66 note, 133.1.1 note, 143-128 note, 143-129 note, 143-131 note, 143-132 note, 143-134 note, 143-135.26 note, 143-408.1 to 143-408.7 note
	28.9	7A-133 note, 7A-200 note, 7A-790 note, 14-415.19 note, 20-79.7 note, 58-86-1 note, 58-86-45 note, 58-86-55 note, 58-87-10 note, 63-68 note, 96-5 note, 97-80 note, 97-88.2 note, 110-90.2 note, 115C-1 note, 115C-12 note, 115C-81 note, 115D-5 note, 116-74.21 note, 120-70.100 note, 122C-22 note, 130A-248 note, 131D-10.2 note, 131D-10.3A note, 131E-175 note, 131E-176 note, 136-44.5 note, 143-611 note, 143B-429 note, 148-29 note, 163-82.1 note
	28.12	7A-45.1, 7A-60, 7A-65, 7A-102, 7A-133, 7A-149, 7A-171.1, 7A-200, 7A-790 to 7A-801, 14-33, 14-33.2, 14-34, 14-34.2, 14-34.5, 14-34.6, 14-190.16, 14-190.18, 14-250, 14-415.1, 14-415.11, 14-415.13, 14-415.16, 14-415.19, 15A-1332, 15A-1340.14, 15A-1340.17, 15A-1340.23, 15A-1343.1, 18B-500, 20-79.7, 58-2-215, 58-3-173, 58-50-130, 58-51-15, 58-51-80, 58-68A-5, 58-78-5, 58-86-30, 58-86-35, 58-86-40, 58-86-45, 58-86-55, 58-87-1, 58-87-5, 58-87-10, 63-37.1, 66-58, 93B-12, 96-4, 96-30 to 96-35, 97-80, 97-88.2, 105-262, 105-449.126, 105-503, 108A-53, 110-90.2, 113-154, 113-

Ch.	Sec.	1995 General Statutes
507	28.12	182, 114-17.1, 114-19.4, 114-19.5, 115C-238.41, 115C-238.47, 115C-302, 116-36.4, 116-36.6, 116-41.18, 116-74.21, 120-3, 120-4.22A, 120-37, 120-70.100 to 120-70.103, 120-131.1, 120-195, 121-9, 122C-53, 122C-119.1, 122C-124 to 122C-126, 126-7.1, 128-24, 128-26, 128-27, 130A-30, 130A-39, 130A-247, 130A-248, 131D-10.2, 131D-10.3A, 135-4, 135-5, 135-40.2, 135-40.5, 135-40.6, 135-40.9, 135-65, 136-18, 143-3.2, 143-23, 143-138, 143-214.7, 143-215, 143-215.107, 143-296, 143-610, 143-611, 143-612, 143-612A, 143-613, 143B-131.1, 143B-131.2, 143B-131.8, 147-11, 147-16, 148-11, 148-37, 150B-1, 150B-21, 150B-21.1, 150B-21.2, 150B-21.3, 150B-21.4, 150B-21.9, 150B-21.11, 150B-21.12, 150B-21.15, 150B-21.16, 150B-21.17, 150B-21.19, 150B-21.26, 150B-21.27, 158-8.1, 158-15.1, 163-82.11, 163-82.20
508	1	130A-13
	2	108A-59
509	1	1C-1807
	2	7A-29
	3	7A-41
	4	7A-343.1
	5	7A-675
	6	7A-676
	7	8C-1-404
	8	14-39
	9	14-72.1
	10	14-401.14
	11	14-413
	12	14-455
	13	15A-1340.16
	14	15A-2000
509	14.1	17C-6
	15	18B-1000
	16-18	18B-1001
	19	19A-1
	20	19A-2
	21	25-2A-103
	22	25-2A-305
	23	25-2A-526
	24	36A-136
	25	45-21.21
	26	45-21.33
	27	55A-7-27
	28	55A-8-05
	29	55A-8-23
	30	55A-10-30
	32	55A-15-30
	33	55A-16-05
	34	62-3
	35	78A-2
	36	88A-23
	36.1	89C-13
	37	90-15
	38	90-92
	39	90-109
	40	90-113.9
	41	90-171.25
	42	90-187.6
	43	90-187.10
	44	90-270.4
	45	90-270.11
	46	90-405
	47	95-25.14
	48	97-80
	49	104E-9
	50	105-130.5
	51	105-275
	52	106-1 Repealed
	53	106-2
	54	106-3 Repealed, 106-6 to 106-8 Repealed, 106-91 Repealed
	55	113-133.1
	55.1(a)-(c)	113-229
	56	113-291.9
	57	113-315.5
	58	113A-103
	59	115C-12
	60	115C-48
	61, 62	115C-81
	64	115D-32
	65	116-233
	66	116-234
	67	126-7
	68	128-30
	69	130A-131.15
	70	130A-294
	71	131E-7
	72	131E-115
	73	131E-250

Ch.	Sec.	1995 General Statutes
509	73.1	135-3
	74, 75	135-5
	76	135-64
	77, 78	143-23
	79	143-128
	80	143-215.26
	81	143-247.2
	82	143-291.3
	83	143-299.2
	84	143-318.11
	85	143-355
	86	143-621
	87	143-622
	88-90	143-627
	91, 92	143-628
	93, 94	143-629
	95	143-632
	96	143A-11
	97	143B-168.15
	98	143B-289.19
	99	143B-426.39A
	100	147-45
	101	147-54
	103-105	158-8.1
	106-109	158-8.2
	110, 111	158-8.3
	112	160A-443
	113	162A-6
	114	163-22
	115	163-82.9
	116	163-144
	117, 118	163-227.2
	119	164-14
	120	166A-1
	121	166A-2
	122	166A-3
	123	166A-4
	124	166A-5
	125	166A-6
	126, 127	166A-7
	128	166A-12
	129	166A-13
	130, 131	166A-14
	132	166A-16
	133	7A-551
	133.1	14-4
	135.1(b)	20-118 note
	(c)	163-155 L.M.
	(d)	163-155 L.M.
	(e), (f)	1A-1-4
	(g)	45-21.16
	(h)	47C-1-102
	(i)	65-47
	(j), (k)	65-66
	(l)	131E-23
	135.2(a)	28A-28-2
	(b)	50-16.3A
	(c)	162A-4
	(e)	87-43.2
	(f)	101-2

Ch.	Sec.	1995 General Statutes
509	135.2(h)	120-2.2 note
	(i)	20-85
	(k)	143-129.4
	(l)	132-10 L.M.
	(n)	32A-14.1 note
	(o)	90-21.11
	(p)	143-318.10
	(q)	131E-97.1
	(r)	131E-97.2
	(s)	90-368
	(t)	55-7-44
	135.3(a)	65-60.1
	(b), (c)	65-64
	(d)	14-415.12
	(e)	14-415.11
	(f)	50-16.6
510	1	105-330.2
	2	105-330.4
	3	105-330.5
	4	105-330.6
511	1	162A-6
	2	162A-14
	2.1	162A-67
	3	153A-284
	4	160A-317
	5	153A-284 note, 160A-317 note, 162A-6 note, 162A-14 note, 162A-67 note
	6, 8	153A-284 note, 160A-317 note, 162A-6 note, 162A-14 note, 162A-67 note
512	1	105-187.7
	2	105-330.9
513	1	136-68
	2	136-69
	3	136-70
	3a.	136-69
514	1	1D-1 to 1D-50
	2	28A-18-2
	3	1A-1-9
	4	1A-1-9 note, 1D-1 note, 28A-18-2 note
516	1	119-13.1
	2	119-13.2
	3	119-13.3
	4	119-39.1
	5	106-549.35
	6	19A-40
	7	106-168.16
	8	106-405.20
	9	106-417.1
	10	106-418.7A
	11	106-418.16
	12	106-549.1
	13	106-549.72
	14	106-549.89
	15	106-715
517	1	58-2-131

Ch.	Sec.	1995 General Statutes
517	2	58-2-171
	3	58-3-90
	3.1	58-3-170
	4	58-7-30
	5	58-12-30
	6	58-16-5
	7	58-16-6
	8	58-16-30
	9, 10	58-19-5
	11, 12	58-19-15
	13	58-30-180
	14	58-30-220
	15	58-31-52
	16	58-33-25
	17	58-33-132
	18	58-36-1
	19	58-36-25
	20, 21	58-36-30
	22	58-36-85
	23	58-37-30
	24	58-37-40
	25	58-40-10
	26	58-42-55
	27	58-44-10 Repealed
	28	58-45-35
	29	58-50-149
	30	58-53-60
	31(a)	58-58-22, 58-58-23
	(b)	58-58-42
	32	58-60-35
	33	58-81-1 Repealed
	33.1	20-109.1
	34	95-111.12
	35	97-2
	36	97-19
	38	131E-210 to 131E-213
	39(a)	131E-210 to 131E-213 Repealed
	(b)	131E-214 to 131E-214.4
	(c)	58-68A-10
	(d)	120-123
	(e)	131E-214 note
	(f), (g)	58-6-25
	(h)	131E-214 note
	(i)	58-6-25 note, 58-68A-10 note, 120-123 note, 131E-214 note
	41	20-109.1 note, 58-2-131 note, 58-2-171 note, 58-3-90 note, 58-3-170 note, 58-6-25 note,58-7-30 note, 58-12-30 note, 58-16-5 note, 58-16-6 note, 58-16-30 note, 58-19-5 note, 58-19-15 note, 58-30-180 note, 58-30-220 note, 58-31-52 note, 58-33-25 note, 58-33-132 note, 58-36-1 note, 58-36-25 note,

Ch.	Sec.	1995 General Statutes
517	41	58-36-30 note, 58-36-85 note, 58-37-30 note, 58-37-40 note, 58-40-10 note, 58-42-55 note, 58-44-10 note, 58-45-35 note, 58-50-149 note, 58-53-60 note, 58-58-22 note, 58-58-23 note, 58-58-42 note, 58-60-35 note, 58-68A-10 note, 95-111.12 note, 97-2 note, 97-19 note, 131E-210 to 131E-214 note
518	1	50-13.4
	2	110-129
519	1	139-4
	2, 3	139-8
	4	14-234
	5	139-3
520	1	157-29
	2	157-9
	3	157-29 note
521	1	106-550
	2	106-564.4
	3	145-17
522	1	99B-1 to 99B-6, 99B-10, 99B-11
	2	99B-1 to 99B-4 note, 99B-6 note, 99B-10 note, 99B-11 note
	3	99B-1 to 99B-4 note, 99B-6 note, 99B-10 note, 99B-11 note
523	1	62-3
	2	62-111
	3	62-112
	4	62-113
	5	62-114 Repealed
	6	62-138
	7	62-141
	8	62-144
	9	62-146
	10	62-147 Repealed
	10.1	62-152.2
	11	62-200
	12	62-203
	13	62-206
	14	62-209
	15	62-211 Repealed
	16	62-260
	17	62-261
	18	62-262
	19	62-264 Repealed
	20	62-265
	21	62-267
	22	62-268
	23	62-270
	24	62-271
	25	62-272
	26	62-273

Ch.	Sec.	1995 General Statutes
523	27	62-278
	28	62-279
	29	62-300
	30	62-320 Repealed
	31	62-119 to 62-125 Repealed
	32	62-300
	32.1, 32.2	105-449.105
524	1	115C-174.1 to 115C-174.6 Repealed
	2	115C-174.10
	3	115C-174.11
	4	115C-174.12
	5	115C-174.11 note
	6	115C-174.11 note
525	1	41-1, 41-28 to 41-33
527	1	50B-3
	2	14-269.8
	3	15A-534.1
528	1	19-2.1
	2	19-6.1
529	1	146-1
	2	146-12
	3	146-14.1
	4	146-64
532		128-21 L.M., 143-166.50 L.M.
533	1	97-133
534	1-3	115C-81
535	1	14-32.2
	2	28A-25-6
	3	58-55-35
	4	108A-14
	5	108A-41
	6	108A-47
	6.1	113-271
	7	122C-22
	8	131D-2
	9	131D-4.1
	10	131D-4.2
	10.1	131D-4.3
	11, 12	131D-19
	13	131D-20
	14	131D-31
	15	131D-32
	16	131D-34
	17, 18	131D-35
	19	131E-16
	20	131E-76
	21	131E-101
	22	131E-104
	23	131E-105
	24	131E-106
	25	131E-115
	26	131E-231
	27	131E-242
	28	135-40.6
	29	135-40.7
	30	143-138
535	31	143B-139.5
	32	143B-153
	33	143B-178
	34	143B-181.10
	35	143B-181.16
	36	168-21
	37	14-32.2 note, 28A-25-6 note, 58-55-35 note, 108A-14 note, 108A-41 note, 108A-47 note, 113-271 note, 122C-22 note, 131D-2 note, 131D-4.1 to 131D-4.2 note, 131D-19 note, 131D-20 note, 131D-31 note, 131D-32 note, 131D-34 note, 131D-35 note, 131E-16 note, 131E-76 note, 131E-101 note, 131E-104 to 131E-106 note, 131E-115 note, 131E-231 note, 131E-242 note, 135-40.6 note, 135-40.7 note, 143-138 note, 143B-139.5 note, 143B-153 note, 143B-178 note, 143B-181.10 note, 143B-181.16 note, 168.21 note
536	1	1-288
538	1, 1.1	50-13.12
	1.2	50-13.9
	1.3	93B-12
	1.4	110-142 to 110-142.2
	2(a)	20-15.1
	(b)	20-17
	(c)	20-24
	(d)	20-24.1
	(e), (f)	20-28
	(g)	20-50.4
	(h)	20-179.3
	(i)	150B-3
	3	110-130.1
	4	110-139
	5	110-133
	6(a)	44-49.1
	(b)	44-50
	7(a)	52A-1 to 52A-32 Repealed
	(b)	52A-1 note
	(c)	52C-1-100 to 52C-1-103, 52C-2-201 to 52C-2-209, 52C-3-301 to 52C-3-318, 52C-4-401, 52C-5-501, 52C-5-502, 52C-6-601 to 52C-6-612, 52C-7-701, 52C-8-801, 52C-8-802, 52C-9-901, 52C-9-902

Ch.	Sec.	1995 General Statutes
539	1	55-1-22.1
	2	55-1-25
	3	55-1-27
	4, 5	55-4-01
	6, 7	55-14-22
	8	55A-16-22 Repealed
	9	55A-1-21
	10	55A-1-22
	11	55A-1-22.1
	12	55A-1-25
	13	55A-1-27
	14	55A-1-28
	15	55A-1-40
	16	55A-1-41
	17	55A-2-02
	18, 19	55A-4-01
	20	55A-5-02
	21	55A-5-02.1
	22	55A-5-03
	23	55A-5-04
	24, 25	55A-14-20
	26	55A-15-09
	27	55A-15-10
	28	55A-15-30
	29	55A-16-01
	30	57C-1-22.1
	31	57C-1-25
539	32	57C-1-27
	33	57C-2-30
	34	59-103
	35	59-206
	36	59-206.1
	37	59-1106
541	1	88-21
	2	88-17
542	5.1	14-415.10 note
	6.1	120-70.60 note
	11.1	120-70.93 note
	12.1	143-610 note
	20.5	120-70.2
	24.1(a)	120-74
	25.2	110-90.2
543	1	105-151.25
	2	106-549.70
	3	106-549.51
544	1	143-215.74D, 143-215.74C, 143-215.74E
545	1	14-208.5 to 14-208.13
	2	114-10
	3	14-208.5 note
546	1	160A-384
	2	153A-343
	2.1	153A-343 note, 160A-384 note

SESSION LAWS OF 1996, 1st Ex. Sess.

Ch.	Sec.	1996, 1st Ex. Sess. General Statutes
1	1-4	96-9

SESSION LAWS OF 1995 (Reg. Sess., 1996)

Ch.	Sec.	1995 (Reg. Sess., 1996) General Statutes
547	..	113-202 note
548	1	97-26
550	1	75-2.1
	2	75-5 to 75-7 Repealed
	3	75-5 note
551	1	113-152 note
552	1	97-86
553	1	163-175
	2	163-291
	3	163-293
	4	163-294
554	1	163-42
555	1	97-19
556	1	53-77.2A Repealed
	2	53-77.1A
	3	54B-110
	4	54C-175
557	1	53-212.1
559		75A-17 L.M.
560	1	105-122
561	1	163-226
	2, 3	163-227
	4	163-227.2
	5	163-229
563		160A-265 L.M.
565	1	160A-376 L.M.
566	1	42-27
567		131E-18 L.M.
568		163-227.2 L.M.
569	1	15-12 L.M., 160A-265 L.M.
	2	15-12 L.M., 160A-265 L.M.
571		143-138 L.M.
572		143B-282 note
573	1	20-116
575	1	143B-431
	2	153A-376

Ch.	Sec.	1995 (Reg. Sess., 1996) General Statutes
575	3	160A-456
	4, 5	159C-3
	6	159C-7
	7	159C-8
	8	159C-11
576		160A-265 L.M.
579	1	58-45-1 note
581		75A-3 L.M., 75A-15 L.M.
582	1	58-30-5
	2	58-30-10
	3	58-64-45
	4	58-64-60
583	1	120-186.1
	2	143B-181.5, 143B-181.6, 143B-181.7 to 143B-181.9 Repealed
584	1	90-39
	2	90-30.1
	3	90-31
	4	90-35
	5	90-26
585	1	130A-334
	2	130A-335
	3	130A-336
586	1	113-129, 113-152, 113-153, 113-154.1, 113-156, 113-161
587	1	95-229.5, 95-229.6, 95-229.7 to 95-229.13
588	1	51-1.2
589	1(a)	7A-41
	(b), (b1)	7A-41 note
	(c)	7A-41
	2(a)	7A-133
	2(b)-(d)	7A-133 note
	3(a)	7A-60
	(b)	7A-60 note
	4, 5(b)	7A-41 note
	(c), (d)	7A-60 note
590	1	136-176 note, 136-177.1 note, 136-180.1 note, 136-185 note
	6	136-176
	7	20-85 note, 20-85.1 note, 105-164.4 note, 105-164.13 note, 105-187.1 note, 105-449.43 note, 120-70.50 note, 136-175 note
	13(d)	136-176 note, 136-177.1 note, 136-180.1 note, 136-185 note
	14	136-180.1
	15	136-177.1
	16	136-185
591	1	50B-1
	2	50B-3
591	3	50B-4
	4	1-110
	5	50-13.2
592	1	58-45-25
	2	58-45-5
	3	58-45-1 note
593	1	163-278.7A
594	1-5	130A-290
	6, 7	130A-294
	8	130A-309.04
	9	130A-309.05
	10	130A-309.06
	11	130A-309.07
	12	130A-309.08
	13	130A-309.09A
	14	130A-309.09B
	15	130A-309.09C
	16	130A-309.09D
	17	130A-309.10
	18	130A-309.11
	19	130A-309.25
	20	130A-309.26
	21	130A-309.53
	22	130A-309.58
	23	130A-309.63
	24	130A-309.83
	25, 26	130A-309.85
	27	153A-292
	28	160A-314
	29	130A-309.10 note
	30(a), (b)	130A-309.09A note, 130A-309.09D note
597	1	131E-8 L.M.
598	1	115C-37 L.M.
599	1	163-227.2 L.M.
601	1	14-159.6 L.M.
	2	14-159.6 L.M.
	3	14-70 L.M.
602	1	131D-34
	2	131E-129
603	1	116-2
	2	116-4
	3	116-5
	4	116-12
	5	147-45
	8	116-2 note, 116-4 note, 116-5 note, 116-12 note, 147-45 note
604	1	45-37
	2	47-46.3
605	1	86A-3
	2	86A-4
	3	86A-6
	4	86A-11
	5	86A-13
	6	86A-14
	7	86A-15
	8	86A-16
	9	86A-17

Ch.	Sec.	1995 (Reg. Sess., 1996) General Statutes
605	10, 11	86A-22
	12	86A-23
	13	86A-24
	14	86A-25
	15	88-1
	16	88-23
606	1	114-19.3
	2	131D-40
	3	131E-255
	4	114-19.1
607	1	44A-7
	2	44A-8
	3	44A-18
608	1	163-82.20
	2, 3	96-5
	4	96-5 note
609	1	7A-646
	2	7A-652
	3	7A-647
	4	7A-650
610		160A-265 L.M.
611	1	143-64.31 L.M., 143-64.32 L.M., 143-128 L.M., 143-129 L.M., 143-131 L.M., 143-133 L.M.
612	1	163-106 L.M.
613	1	136-96 L.M.
614	1	15-12 L.M., 160A-265 L.M.
615	1	157-6 L.M.
617	1	105-322 L.M.
618	1	15-12 L.M., 160A-265 L.M.
	2	15-12 L.M., 153A-176 L.M.
619	1	105-349 L.M.
620	1	160A-70 L.M.
625		116-111 note, 115D-5 note
626	1	143-215.10A to 143-215.10G
	2	143-215.1
	3	143-215.2
	4	143-215
	5	143B-301
	6(a)	90A-35
	(b)	90A-47 to 90A-47.6
	7(a)	106-800 to 106-805
	(b)	106-800 note
	8	106-800 note
	9, 10	143-215.74
	11	106-800 note, 143-215.10A note, 90A-47 note
	12	90A-47 note, 106-800 note
	13	143-215.74C to 143-215.74E Repealed

Ch.	Sec.	1995 (Reg. Sess., 1996) General Statutes
626	14	143-215.10A note
	15	143-215.10B note
	16, 17	143-215.10C note
	18	143-215.10A note
	19(c)	143-215.10C note
	22	143B-301 note
	24	106-803 note
627	2	113-133.1 note
629	2	161-22.3 L.M.
630	1	113-291.2 L.M.
631	1	115C-489.1 to 115C-489.4 note, 115C-546.1 note
	11(e)	115C-489.1 to 115C-489.4 note, 115C-546.1 note
	12	115C-489.2
	13	115C-489.3 Repealed, 115C-489.4 Repealed
	15	115C-546.1
	17	115C-489.1 to 115C-489.4 note, 115C-546.1 note
632	1	14-202.3
633	1(a)	113-154
	(b)	113-202 L.M.
	2	113-190
	3(a)	143-215.22J, 143-215.22K
	(b)	143-215.22J note
	4	143B-279.7
	6	113-190 note
634	1(a)	90-15.1
	(b)	90-15.1 note
	2	90-12
635	1	20-77
	2-4	44A-4
637	1	15-13 L.M.
639		159-32 L.M.
644	1	63-56
	2	160A-20
	3	159-81
	4	159G-3
645	1	90-280
646	1	105-53
	2	105-113.45
	3	105-117 Repealed 105-118 Repealed
	4, 5	105-164.13
	6	105-164.14
	7	105-191 Repealed 105-196 Repealed
	8	105-197
	9	105-229 Repealed
	10	105-236
	11	105-241.1
	12	105-275
	13	105-275.1
	14	105-277A
	15	105-278.7

Ch.	Sec.	1995 (Reg. Sess., 1996) General Statutes
646	16	105-282.1
	17	105-277.2
	18	105-333
	19	58-6-25
	20	113-44.15
	21	132-1.1
	22(a), (b)	160B-3, 160B-4
	24	105-330.2
	25(a)	96-12
647	1, 2	105-449.60
	3	105-449.65
	4	105-449.66
	5	105-449.67
	6	105-449.69
	7, 8	105-449.70
	9	105-449.71
	10	105-449.72
	11	105-449.73
	12	105-449.77
	13	105-449.81
	14	105-449.82
	15	105-449.83A
	16	105-449.84
	17	105-449.84A
	18	105-449.85
	19	105-449.87
	20, 21	105-449.88
	22	105-449.89
	23	105-449.90
	24	105-449.90A
	25	105-449.91
	26	105-449.92
	27	105-449.93
	28	105-449.94
	29	105-449.95
	30	105-449.96
	31, 32	105-449.97
	33	105-449.98
	34	105-449.100
	35	105-449.101
	36	105-449.102
	37	105-449.104
	38	105-449.105
	39, 40	105-449.115
	41	105-449.118A
	42	105-449.120
	43	105-449.121
	44	105-449.130
	45	105-449.131
	46	105-449.134
	47	105-449.136
	48	105-449.138
	49	105-449.139
	50	105-449.57
	51	105-236
	52	105-253
	53	119-15
	54	119-16.2
	55	119-18

Ch.	Sec.	1995 (Reg. Sess., 1996) General Statutes
647	56	119-40 Repealed 119-41 Repealed 119-44 Repealed
648	1	143-215.94V note
	2	143-215.94C
	3, 4	143-215.94E
	5, 6	143-215.94V note
	8	143-215.94V note
649	1	105-164.13
	2	105-164.3
650	1	131F-3
651	1	153A-158.1
652	1	20-141
	2	20-16.1
653	1	143B-308
	2	143B-309
	3	143B-310
	4	413-44.3 to 113-44.6 Repealed
	5	143B-309 note
654	1	160A-58.1 L.M.
657	1	153A-233 L.M.
658	1	58-30-160
659	1	58-7-162
662	1	115C-84.1
664	1	105-228.90
665	1	90-210.67
666	2	115C-426.2
	3	115C-431
	4	105-503 recodified as 115C-440.1
	5	115C-440.1
667	2	122C-412, 122C-412.1, 122C-412.2
	3	122C-403
	4	122C-404 Repealed
	5	122C-405
	6	122C-411.1
668	1	58-36-30
	2	58-40-30
669	1	58-50-130
	2	58-3-173
670	1(a)	58-6-25 note
	2(a)	62-302 note
671	1	160A-265 L.M.
673	1	136-18 note, 62-235
	2	62-41
	3	62-235 Repealed
	4	136-18
	5	62-236 recodified as 136-20.1
	6, 7	136-18, 136-20.1
674	1	44-49.1 recodified as 58-3-185
	2	58-3-185
	3	44-50
675	1	20-7
	2	20-14

Ch.	Sec.	1995 (Reg. Sess., 1996) General Statutes
676	1	44-51.8
678	1	58-84-1 L.M.
	2	58-84-1 L.M.
681		153A-15
683	1	153A-27.1
684	1	160A-364
688	1	163-45
	2	163-82.10
690	1	143B-139.7
	2	143B-279.6
	3	153A-77
	4	7A-289.24
	5	108A-1
	6	108A-2
	7	108A-3
	8	108A-7
	9	108A-15.1
	10	122C-116
	11	122C-123
	12	122C-127
	13	130A-34
	14	130A-43
	15	126-5
	16	153A-77 note
691	1	105-330.4 note, 105-360 note
	2-4	105-307 note, 105-330.4 note, 105-360 note
692	1	160A-58.1 L.M.
693	1	128-21 L.M., 143-166.50 L.M.
	2	128-21 L.M., 143-166.50 L.M.
694	1	163-33
	2	163-22.1
695	1	20-37.16
696	1	105-236
699	1, 2	58-84-1 L.M., 58-84-30 L.M.
700	1-3	160A-265 L.M., 160A-272 L.M.
702	1	153A-158.1
703	1	153A-158.1
705	1	153A-158.1
706	1	115D-15 L.M., 153A-158 L.M., 160A-274 L.M.
	2	153A-158 L.M.
707	1	160A-58.1 L.M.
708	1	160A-265 L.M.
709	1	160A-272 L.M.
710	1	153A-18 L.M.
712	1	14-277
713	1	131E-7.1
	2	131E-99
	3(a)	131E-111 recodified as 131E-255
	(b)	131E-255, 131E-256
	(c)	131E-256 note
714	1	45A-1 to 45A-7

Ch.	Sec.	1995 (Reg. Sess., 1996) General Statutes
714	2	53-234
715	1	20-134
716	1	115C-12
	2	115C-238.1 to 115C-238.8 recodified as 115C-105.20 to 115C-105.32
	3	115C-105.20 to 115C-105.27 115C-105.28 Repealed, 115C-105.29 Repealed, 115C-105.30 to 115C-105.39
	4	115C-64.1 to 115C-64.5 Repealed
	5	115C-39
	6	115C-274
	7	115C-296
	7.1	115C-288
	8	115C-325
	8.1-8.5(a)	115C-81.2
	8.6	115C-81
	8.7	115C-98
	9	115C-84
	10	115C-302
	11, 12	115C-47
	13	115C-522
	14	115C-528
	15	115C-529
	15.1	115C-522.1
	16	115C-326
	17	115C-47
	18	115C-85
	19	115C-98
	20	115C-112 Repealed
	21	115C-391
	22	115C-105.3
	23	115C-238.23
	24	115C-238.31
	25	115C-276
	26	115C-302
	27	115C-105.21A L.M.
	28	115C-17
	29(b)	115C-15
	30	143-57.1
	31	143-57.1 note
717	1	163-227.2 L.M.
718	1	160A-232 L.M.
719	1	15A-1415
	2	15A-1419
	3	15-217.1 recodified as 15A-1420
	4	15A-1420
	5	15-194
	6	15A-1441
	7	7A-451
	8	15A-1415 note
720	1	90-500 to 90-511
	2	90-501 note

Ch.	Sec.	1995 (Reg. Sess., 1996) General Statutes
723	1	115C-84 L.M., 115C-84.1 L.M.
	2	115C-84 L.M., 115C-84.1 L.M.
	3	115C-84 L.M., 115C-84.1 L.M.
724	1	115C-84 L.M., 115C-84.1 L.M.
	2	115C-84 L.M., 115C-84.1 L.M.
	3	115C-84 L.M., 115C-84.1 L.M.
725	1, 2	7A-272
	3	15A-644.1
	4	7A-191.1
	5	15A-1011
	6	15A-1029.1
	7	15A-941
	8	15A-942
	9	15A-952
	10	15A-1221
726	1	58-71-1
	2	58-71-40
	3	58-71-45
	4	58-71-50
	5	58-71-55
	6	Repealed
	7	58-71-65
	8	58-71-70
	9	58-71-71
	10	58-71-72
	11	58-71-75
	12	58-71-81
	13	58-71-82
	14	58-33-25
	15	58-71-82
	16	58-71-95
	17	58-71-105
	18	58-71-115
	19	58-71-140
	20	58-33-25
	21	58-33-25 note, 58-71-1 note
	22	58-33-25 note, 58-71-1 note, 58-71-40 note, 58-71-45 note, 58-71-50 note, 58-71-55 note, 58-71-60 note, 58-71-65 note, 58-71-70 note, 58-71-71 note, 58-71-72 note, 58-71-75 note, 58-71-81 note, 58-71-82 note, 58-71-95 note, 58-71-105 note, 58-71-115 note, 58-71-140 note
727	1	14-409.39, 14-409.40
728	1	143-215.108
729	1	58-2-145
730	1	58-40-10
	2	58-36-2

Ch.	Sec.	1995 (Reg. Sess., 1996) General Statutes
730	3	58-36-75
731	1	115C-238.29A note, 135-40.1 note
	2	115C-238.29A to 115C-238.29J
	3	135-40.1
	4	115C-238.29A note, 135-40.1 note
732	1	153A-357 L.M., 160A-417 L.M.
733	1	160A-443 L.M.
734	1	163-41
	2	163-42
	3	163-43
	4	163-87
	4.1	163-45
	5	163-226
737	1	153A-158.1
738	1	14-236 L.M.
	2	14-234 L.M.
739	1	122C-132
	2	122C-201
	3	122C-210.1
	4	122C-251
	5, 6	122C-261
	7	122C-262
	8(a)-(c)	122C-263
	9	122C-264
	10(a), (b)	122C-266
	11(a), (b)	122C-268
	12(a)	122C-270
	13	122C-271
	14	122C-261 note
	15	122C-132 note, 122C-201 note, 122C-210.1 note, 122C-251 note, 122C-261 to 122C-264 note, 122C-268 note, 122C-270 to 122C-271 note
740	1	58-45-35
741	1, 2	20-50.4
742	1(a)	1-47, 1-50
	(b)	1-52
	2	1-349
	3	1-538.2
	4	1A-1-30
	5	6-21.3
	6	14-3
	7, 8	14-32.2
	9	14-32.3
	10	14-34.5
	11	14-107
	12	14-202.2
	13, 14	15A-1002
	15	15A-1340.14
	16	15A-1340.22
	17	30-26

Ch.	Sec.	1995 (Reg. Sess., 1996) General Statutes
742	18	47-41.01
	19	47-46.3
	20	53-141
	21	53-175
	22	53-224.21
	23	58-14-15
	24	58-30-10
	25	58-35-10
	26	58-40-90
	27	58-51-15
	28	58-66-35
	29-32	62-2
	33	62-200
	34	66-234
	35	89C-25
	36	90-411
	37	91A-8
	38	153A-405
	39	159I-30
	40	160B-20
	41	160B-21
	42	75A-13.2
	42.1	50B-3
	42.2	131D-40 note, 131E-255 note, 131E-265 note
	42.3	1-285
	42.4	1-286
	43	150B-21.3
743	1	20-183.7
	2	87-94
	3	106-802
	4	130A-291
	5	130B-5
	6	130B-7
	7	130B-16
	8	130B-22
	9	136-28.8
	10, 11	143-58.2
	12	143-214.2A
	13	143-215.3A
	14	143-215.6A
	15	143-215.17
	16	143-215.94O
	17	143-215.94W
	18	143-215.114
	19	143-439
	20	143B-279.3
	21	143B-282.1
	22	147-45
	23	159G-3
	24	159I-3
	25	143B-10 note
	26	159I-30
744	1	44A-2
745	1	14-41
746	1	160A-360
	2	160A-362
	3	160A-50
	4	160A-38
	5	1-54.1

Ch.	Sec.	1995 (Reg. Sess., 1996) General Statutes
746	6	153A-348
	7	160A-364.1
747	1	105-228.9
	2	105-228.5
	3	58-6-25
	4	58-84-1
	5	58-84-5
	6	58-84-10 Repealed, 58-84-15 Repealed, 58-84-20 Repealed
	7	58-84-25
	8	58-22-15
	9	58-22-20
	10	58-22-35
	11	58-6-20
	12	58-45-80
	13	58-46-45
	14	58-47-30
	16	58-6-20 note, 58-6-25 note, 58-22-15 note, 58-22-20 note, 58-22-35 note, 58-45-80 note, 58-46-45 note, 58-47-30 note, 58-84-1 note, 58-84-5 note, 58-84-10 note, 58-84-15 note, 58-84-20 note, 58-84-25 note, 105-228.5 note, 105-228.9 note
748	1.1	131F-9
	1.2	131F-17
	1.3	131F-6
	2.1	143-6.1
	2.2	143-6.1 note
	3.1	131F-9 note, 131F-17 note
749	1	122C-115
	2	122C-117
	3	122C-118
	4	122C-119
	5	122C-119.1
	6	122C-124
	7	122C-125
	8	122C-125.1
	9	122C-126
750	1	153A-158.1 L.M.
751	1	14-49
	2	14-62
	3	14-62.2
752	1	58-43-20 Repealed
	2	58-10-25
753	1	62-110
756	1	20-1
	2-4	20-4.01
	5	20-37.16
	6	20-64.1 Repealed
	7	20-87
	8	20-88
	9	20-91
	10	20-92 Repealed

		1995 (Reg. Sess., 1996)
Ch.	**Sec.**	**General Statutes**
756	11	20-99
	12	20-101
	13	20-113 Repealed
	14	20-116
	15	20-123
	16	20-130.1
	17	20-215.1
	18	20-279.32
	19	20-317
	20	20-376
	21	20-378 Repealed
756	22	20-379
	23	20-380
	24	20-381
	25	20-382
	26	20-382.1
	27	20-384
	28	20-385
	29	20-118
	30	20-135.1 Repealed
	31	20-179.3

SESSION LAWS OF 1996, 2nd Ex. Sess.

		1996, 2nd Ex. Sess.
Ch.	**Sec.**	**General Statutes**
3	1	160A-58.1 L.M.
9	1	7A-41.2
	2	163-1
	3-5	163-140
	6	163-192
	7	163-321 to 163-335
	8	163-106
	9	163-107
	10	163-111
	11	163-140
	12	163-107.1
	13	163-114
	14	163-122
	15	163-135
	16	163-137
	17	163-138
	18, 19	163-140
	19.1	163-156
	20	163-191
	21	163-9
	22	163-156
11	1	153A-158.1
13	1	105-2 to 105-4 note, 105-9 note, 105-23.1 note, 105-33 note, 105-113.45 note, 105-129.2 note, 105-129.6 note, 105-129.8 note, 105-129.10 note, 105-129.11 note, 105-129.15 note, 105-129.18 note, 105-130.3 note, 105-134.1 note, 105-134.6 note, 105-151.26 note, 105-164.3 to 105-164.11 note, 105-164.12B note, 105-129.15 to 105-129.19 note, 105-188 note, 105-241.1 note, 105-465 note, 105-467 note, 105-468 note, 108A-93 note, 115C-546.1 note, 143B-437D note, 143B-437A note, 153A-376 note, 160A-456 note
	1.1	105-164.4
	1.2	105-465
	1.3	105-467
	1.4	105-468
	1.5, 1.6	105-277A note, 105-482 note, 105-486 note, 105-497 note, 105-501 note, 108A-93 note, 115C-1 note
	1.7	105-465 note, 105-482 note, 105-498 note
	2.1	105-130.3
	2.2	115C-546.1
	3.1	105-129.2 to 105-129.11
	3.2	105-130.40 recodified as 105-129.8
	3.3	105-129.2 to 105-129.11
	3.4	105-151.17 recodified as 105-129.8
	3.5	143B-437A
	3.6	143B-437D
	3.7	105-241.1
	3.8	153A-376
	3.9	160A-456
	3.10	143B-437E
	3.11	105-129.10 note, 105-129.2 note, 105-228.90 note
	3.12	105-129.15 to 105-129.19
	4.1	105-113.45
	4.2	105-33 note, 105-113.41 to 105-113.67
	5.1	105-164.12B
	6.1	105-4
	6.2	105-3
	6.3	105-188
	6.4	105-2
	6.5	105-9
	6.6	105-23.1

		1996, 2nd Ex. Sess.
Ch.	**Sec.**	**General Statutes**
13	7.1	105-151.26
	8.1	105-134.6
	8.2	105-134.1
	9.1, 9.2	105-164.4
	10.1	143B-437D note, 143-437E, 105-2 note, 105-3 note, 105-4 note, 105-9 note, 105-23.1 note, 105-113.45 note, 105-129.2 to 105-129.11 note, 105-129.6 note, 105-129.8 note, 105-129.10 note, 105-129.11 note, 105-129.15 to 105-129.19 note, 105-130.3 note, 105-134.1 note, 105-134.6 note, 105-151.26 note, 105-164.4 note, 105-164.12B note, 105-188 note, 105-241.1 note, 105-465 note, 105-467 note, 105-468 note, 108A-93 note, 115C-546.1 note, 143B-437A note, 153A-376 note, 160A-456 note
14	1	105-130.8 Repealed, 105-151.15 Repealed
	2	105-130.7 Repealed
	3	105-130.7
	4	105-130.5
	5	105-130.4
	6	105-163.012
	7	105-163.010 to 105-163.014
	8	53A-46 Repealed
	9	105-134.6
	10	105-130.5
	10.1	105-267
	11	105-164.6A
	12	105-469
	13, 14	105-164.3
	15, 16	105-164.13
	17	105-36.1 Repealed, 105-37 Repealed, 105-42 Repealed, 105-45 Repealed, 105-46 Repealed, 105-50 Repealed, 105-51.1 Repealed, 105-53 Repealed, 105-54 Repealed, 105-55 Repealed, 105-58 Repealed, 105-60 Repealed, 105-61 Repealed, 105-62 Repealed, 105-65 Repealed, 105-65.1 Repealed, 105-66.1 Repealed,
14	17	105-70 Repealed, 105-72 Repealed, 105-74 Repealed, 105-75.1 Repealed, 105-77 Repealed, 105-80 Repealed, 105-85 Repealed, 105-86 Repealed, 105-89 Repealed, 105-89.1 Repealed, 105-90 Repealed, 105-91 Repealed, 105-97 Repealed, 105-98 Repealed, 105-99 Repealed, 105-102.1 Repealed, 105-102.5 Repealed,
	18, 19	105-33
	20	105-38
	21	105-109.1
	22	153A-152
	23	160A-211
	24	66-250 to 66-258
	25	105-163.15 note, 105-163.41 note
	26	53A-46 note, 66-250 note, 105-33 note, 105-36 note, 105-36.1 note, 105-37 note, 105-38 note, 105-42 note, 105-45 note, 105-46 note, 105-50 note, 105-51.1 note, 105-53 note, 105-54 note, 105-55 note, 105-58 note, 105-60 note, 105-61 note, 105-62 note, 105-65 note, 105-65.1 note, 105-66.1 note, 105-70 note, 105-72 note, 105-74 note, 105-75.1 note, 105-77 note, 105-80 note, 105-85 note, 105-86 note, 105-89 note, 105-89.1 note, 105-90 note, 105-91 note, 105-97 note, 105-98 note, 105-99 note, 105-102.1 note, 105-102.5 note, 105-109.1 note, 105-130.4 note, 105-130.5 note, 105-130.7 note, 105-130.38 note, 105-134.6 note, 105-151.15 note, 105-151.19 note, 105-163.010 to 105-163.015 note, 105-163.41 note, 105-164.3

Ch.	Sec.	1996, 2nd Ex. Sess. General Statutes
14	26	note, 105-164.6A note, 105-164.13 note, 105-267 note, 105-469 note, 153A-152 note, 160A-211 note
15	16	93E-1-5
	16.1	143B-313.2
16	1	115C-518 L.M., 160A-265 L.M.
17	1	143-573 note, 143-614 note
	3.1	143-577
	3.2	143-573, 143-574, 143-577
	15.1(b)	55-14-22
	(d)	55A-14-22
	(e)	57C-6-03
	16.1	143-610 note
	16.2	143-610 Repealed, 143-611 Repealed, 143-612A Repealed, 143-614 Repealed
	16.3	58-68A-1 Repealed, 58-68A-5 Repealed, 58-68A-10 Repealed
	16.5	143-611 note
18	1.1	7A-45 note, 7A-45.1 note, 7A-60 note, 7A-101 note, 7A-102 note, 7A-133 note, 7A-171.1 note, 7A-198 note, 7A-304 note, 7A-465 note, 7A-523 note, 7A-524 note, 7A-603 note, 7A-647 note, 7A-655 note, 7A-790 note, 14-32.4 note, 14-34.7 note, 14-315 note, 15A-502 note, 15A-1343 note, 15A-1368.2 note, 15A-1368.4 note, 15A-1368.6 note, 15A-1376 note, 20-4 note, 20-39 note, 20-79.5 note, 20-79.7 note, 62-10 note, 63A-23 note, 89C-3 note, 89C-14 note, 89E-3 note, 90-85.27 note, 90-95 note, 90A-47.3 note, 90B-10 note, 96-3 note, 96-5 note, 105-113.46 note, 105-113.47 note, 105-113.81A note, 105-113.82 note, 105-130.41 note, 105-151.22 note,
18	1.1	105-164.14 note, 105-277.1 note, 105-277.1A note, 105-309 note, 105A-2 note, 106-805 note, 108A-27 note, 108A-53 note, 108A-54 note, 108A-57 note, 113-145.1 note, 113-291.6 note, 113A-1 to 113A-10 note, 113A-50 to 113A-66 note, 115C-1 note, 115C-12 note, 115C-81 note, 115C-105.21A note, 115C-109 note, 115C-110 note, 115C-113 note, 115C-150.5 note, 115C-174.11 note, 115C-288 note, 115C-290.5 note, 115C-290.7 note, 115C-290.8 note, 115C-295.1 note, 115C-295.2 note, 115C-295.3 note, 115C-302 note, 115C-316 note, 115C-468 note, 115C-489.3 note, 115C-521 note, 115D-5 note, 115D-39 note, 116-19 note, 116-30.1 note, 116-30.2 note, 116-30.3 note, 116-41.18 note, 116-44.6 note, 116-44.9 note, 116-143 note, 116-209.25 note, 116C-1 note, 120-3.1 note, 120-4.22A note, 120-32.01 note, 120-32.1 note, 120-36.6 note, 120-37 note, 120-70.36 note, 120-70.46 note, 120-70.52 note, 120-70.65 note, 120-70.82 note, 120-70.90 note, 120-70.92 note, 120-70.95 note, 120-70.101 note, 120-70.102 note, 120-76 note, 120-204 note, 121-9 note, 122A-5.13 note, 122C-411.1 note, 126-7 note, 128-27

Ch.	Sec.	1996, 2nd Ex. Sess. General Statutes
18	1.1	note, 130A-294.1 note, 130A-310.10 note, 130A-334 note, 130A-335 note, 130A-336 note, 133-1.1 note, 135-5 note, 135-40.1 note, 135-40.3 note, 135-40.6 note, 135-65 note, 136-12 note, 136-16.6 note, 136-18 note, 136-44.7A note, 136-89.56 note, 136-176 note, 143-1 note, 143-8 note, 143-11 note, 143-12 note, 143-15.2 note, 143-15.3A note, 143-15.3B note, 143-16.3 note, 143-18.1 note, 143-23 note, 143-25 note, 143-27 note, 143-28.1 note, 14-34.6 note, 143-49 note, 143-131 note, 143-132 note, 143-135.26 note, 143-166.13 note, 143-200 note, 143-211 note, 143-214.8 note, 143-214.9 note, 143-214.10 note, 143-214.11 note, 143-214.12 note, 143-214.13 note, 143-215.10A note, 143-215.10B note, 143-215.10G note, 143-215.74 note, 143-215.114A note, 143-341 note, 143-660 note, 143-665 note, 143-670 note, 143B-136 note, 143B-138 note, 143B-168.10 note, 143B-168.12 note, 143B-168.13 note, 143B-168.14 note, 143B-168.15 note, 143B-260 note, 143B-273.15 note, 143B-282 note, 143B-426.21 note, 143B-431.1 note, 146-26 note, 147-11 note, 147-54.5 note, 147-64.12 note, 148-29 note, 148-37 note, 150B-2 note, 150B-19 note, 150B-20
18	1.1	note, 150B-21.1 note, 150B-21.2 note, 150B-21.3 note, 158-15.1 note
	5.3	143-15.3A note
	5.4	143-16.3 note
	7.1(a)	143-15.2
	(b)	143-15.3A
	7.4(a)	120-76
	(b)	143-15.3A
	(c)	143-12
	(d)	143-15.3A
	(e)	143-18.1
	(f)	143-23
	(g)	143-25
	(h)(1), (2)	143-27
	(3)	143-27 note
	(i)	116-30.2
	(j)	143-16.3
	(k)	116-30.1
	7.6	143-11 note
	7.7(a)	121-9
	(b)	146-26
	7.8	143-16.3 note
	7.10(a)	150B-19
	(b)	150B-20
	(c), (d)	150B-21.1
	(e)	150B-21.2
	(f)	150B-21.3
	(g)	150B-2
	(h)	120-70.101
	(i)	89C-3
	(j)	89E-3
	(k)	89C-14
	8(a)	20-79.5
	(b)	120-3.1
	(c)	120-32.1
	(d)	120-36.6
	(e)	120-70.36
	(f)	120-70.46
	(g)	120-70.52
	(h)	120-70.65
	(i)	120-70.82
	(j)	120-70.92
	(k)	120-70.95
	(l)	120-70.102
	(m)	143-8
	(n)	147-64.12
	8.1	120-32.1
	8.2	120-32.01
	10.1	143-135.26
	10.2	143-341
	10.3	165-48 note
	11.1(a)	143-200
	13	147-54.5
	13A	143-16.3 note
	15.1(a)	105-277.1
	(b)	105-309
	(c)	105-277.1A

Ch.	Sec.	1996, 2nd Ex. Sess. General Statutes
18	15.3(a)	105-130.41
	(b)	105-151.22
	15.4(a)	105-113.46
	(b)	105-113.47
	(c)	105-113.46 note, 105-113.47 note
	15.7(a)	105-164.14
	16	116-19 note
	16.2	116-30.3 note
	16.5(a)	116-44.6 to 116-44.8
	(b), (c)	116-44.6 note
	16.7	116-209.25
	16.12	116C-1 note
	17.1(a)	115D-39
	(b)	115D-39 note
	17.4, 17.7(a)	115D-5
	18.4	115C-12
	18.8	115C-302 note, 115C-316 note
	18.10	115C-468
	18.12(a)	115C-295.1
	(b)	115C-295.2, 115C-295.3
	18.13A	115C-302
	18.14	115C-174.11
	18.17(a)	115C-81
	(b)	115C-489.3
	(c), (d)	115C-521
	(e)	115C-489.3 note, 115C-521 note
	18.18	115C-489.3 note
	18.21(a)	115C-290.5
	(b)	115C-290.7
	(c)	115C-290.8
	18.24(a)	115C-81
	(b)	115C-109
	(c), (d)	115C-110
	(e)	115C-113
	(f)	115C-150.5 to 115C-150.8
	(h)-(k)	115C-105.25
	(l)	115C-150.7 note
	18.25(b)	115C-150.5 note
	18.26(a)	115C-302 L.M., 115C-316 L.M.
	(b)	115C-302 L.M.
	(c)	115C-316 L.M.
	(d)-(j)	115C-302 L.M., 115C-316 L.M.
	(k)	115C-302 L.M.
	(l)	115C-302 L.M., 115C-316 L.M.
	(m)	115C-302 L.M.
	18.27	115C-288
	18.28(a)-(d)	115C-12
	19.3	20-4
18	19.4(a)	136-176
	(b)	143-28.1
	(c)	136-12(a1)
	19.6	136-12 note
	19.7	136-44.7A
	19.10(a)	136-18
	(b)	136-89.56
	19.11(e)	20-79.7
	19.12	136-16.6
	20.1	143B-260 note, 148-5 note
	20.2(a)	148-29
	(b), (c)	148-29 note
	20.4	143B-273.15 note
	20.7(a)	143-166.13
	20.13(a)	14-32.4
	(b)	14-315
	(c)	90-95
	20.14(a)	15A-1368.2
	(b)	15A-1368.4
	(c)	15A-1343
	20.14B(a)	14-34.7, 143-34.6 note
	20.15(a)	15A-1376
	(b)	15A-1368.6
	20.18	148-37
	21.4	122C-411.1 Repealed
	22(a)	7A-60
	22.2	7A-790 note
	22.3	164-46
	22.4	7A-133
	22.6(a)	7A-45.1
	(b)	7A-45 note, 7A-45.1 note
	22.7(a)	7A-133
	(b)	7A-133 note, 143B-437A
	22.8(a), (b)	7A-133 note
	22.11	7A-198
	22.13(a)	7A-304
	23(a)	20-39
	(b)	20-39 note
	23.2(a)	7A-603
	(b)	15A-502
	(c)	7A-523
	(d)	7A-524
	(e)	7A-655
	23.3(a)	143-660 to 143-664
	(b)	143B-426.21
	(c), (d)	143-660 note
	23.4(a)	113A-1 to 113A-10 note, 113A-21 note, 113A-50 to 113A-66 note
	24	90-85.27 note, 108A-54
	24.2(a)	108A-57
	(b), (c)	108A-57 note
	24.4A	143-16.3 note, 143-23

Ch.	Sec.	1996, 2nd Ex. Sess. General Statutes
18	24.5	143B-138 note
	24.8(a)	120-204 to 120-207
	24.11	90B-5 note, 90B-10
	24.16A	108A-27 note
	24.17	143-49
	24.20	143B-136 note
	24.21A	7A-647 note
	24.22(a)	158-15.1
	(b), (c)	158-15.1 note
	24.26B(a)	122A-5.13
	(b)-(d)	122A-5.13 note
	24.29(a)	143B-168.10 note
	(b)	143B-168.12
	(c)	143B-168.13
	(d)(1)	143B-168.14
	(2)	143(B)-168.14 note
	(e)	143B-168.15
	(f)	143B-168.10 note
	(g)	120-70.70 to 120-70.92 Repealed
	(i)-(k)	143B-168.10 note
	24.30(a)-(c)	105A-2 note
	(d)	105A-2
	(e), (f)	105A-2 note
	25.2(a)	105-113.81A, 105-113.82
	25.2(b)	105-113.81A
	26	63A-23
	26.5(b)	143B-437A(c1)
	26.6	96-5
	26.7	143B-431.1 note
	26.9	96-5 note
	27, 27.1	143-215.74 note
	27.4(a)	143-214.8 to 143-214.13
	(b)	143B-282
	(c), (e)	143-214.8 note
	27.6(a)	113-145.1 to 113-145.8
	(b)	143-15.3B
	(c)	113-145.6(g)
	(d)	143-15.3B note
	27.10	130A-294.1 note, 130A-310.10 note
	27.13	143-215.10G note
	27.15(a)-(c)	113-291.6 note
	27.22(a), (b)	143-215.74
	(c)	143-215.74 note
	27.24(a)	143-670 to 143-673
	(b)	143-670 note
	27.31(a), (b)	130A-334
	(c)	130A-335
18	27.31(d)-(f)	130A-336
	27.33	113.202 L.M.
	27.34(a)	143-215.10A
	(b)	143-215.10B
	(c)	90A-47.3
	(d)	106-805
	(e)	143-215.10A note
	(f)	143-215.114A
	27.36	150B-21.3 note
	28(a)	147-11
	28.2(b)	62-10
	(c)	96-3
	28.4	7A-101
	28.5	7A-102
	28.6(a), (b)	7A-171.1
	28.7, 28.8	120-37
	28.18(a)	126-7 note
	28.20	note
	28.21(a)	135-5
	(b)	135-65
	(c)	120-4.22A
	(d)	128-27
	28.23(a)	135-40.1
	(b)	135-40.3
	28.24	135-40.6
	28.25	7A-465
	29.2	7A-45, 7A-45.1 note, 7A-133 note, 7A-647 note, 7A-790 note, 20-39 note, 90-85.27 note, 96-5 note, 105-113.46, 105-113.47 note, 105A-2 note, 108A-27 note, 108A-54 note, 108A-57 note, 113-145.1 note, 113-291.6 note, 113A-1 to 113A-10 note, 113A-50 to 113A-66 note, 115C-1 note, 115C-12 note, 115C-302 note, 115C-316 note, 115C-489.3 note, 115D-5 note, 115D-39 note, 116-19 note, 116-30.3 note, 116-41.18 note, 116-143 note, 116B-23 note, 116-44.6 note, 116C-1 note, 120-70.90 note, 122A-5.13 note, 122C-411.1 note, 126-7 note, 130A-294.1 note, 130A-310.10 note,

		1996, 2nd Ex. Sess.
Ch.	**Sec.**	**General Statutes**
18	29.2	133-1.1 note, 143-1 note, 143-11 note, 143-15.3A note, 143-15.3B note, 143-16.3 note, 143-23 note, 143-27 note, 143-131 note, 143-132 note, 143-135.26 note, 143-211 note, 143-214.8 note, 143-215.10G note, 143-215.74 note, 143-660 note, 143-670 note, 143B-136 note, 143B-138 note, 143B-168.10 note 143B-260 note, 143B-273.15 note, 143B-431.1 note, 148.5 note, 150B-21.3 note, 158-15.1 note
	29.5	7A-45 note, 7A-45.1 note, 7A-60 note, 7A-101 note, 7A-102 note, 7A-133 note, 7A-171.1 note, 7A-198 note, 7A-304 note, 7A-465 note, 7A-523 note, 7A-524 note, 7A-603 note, 7A-655 note, 14-32.4 note, 14-34.7 note, 14-315 note, 15A-502 note, 15A-1343 note, 15A-1368.4 note, 15A-1368.6 note, 15A-1376 note, 20-4 note, 20-39 note, 20-79.5 note, 20-79.7 note, 62-10 note, 63A-23 note, 89C-3 note, 89C-14 note, 89E-3 note, 90-95 note, 90A-47.3 note, 90B-10 note, 96-3 note, 96-5 note, 105-113.46 note, 105-113.47 note, 105-113.81A note, 105-113.82 note, 105-130.41 note, 105-151.22 note, 105-164.14 note, 105-277.1 note, 105-277.1A note, 105-309 note, 105A-2 note, 106-805 note, 108A-53 note, 108A-57 note, 113-145.1 note,
18	29.5	115C-12 note, 115C-81 note, 115C-105.21A note, 115C-109 note, 115C-110 note, 115C-113 note, 115C-150.5 note, 115C-174.11 note, 115C-288 note, 115C-290.5 note, 115C-290.7 note, 115C-290.8 note, 115C-295.1 note, 115C-295.2 note, 115C-295.3 note, 115C-302 note, 115C-468 note,115C-489.3 note, 115C-521 note, 115D-5 note, 115D-39 note, 116-30.1 note, 116-30.2 note, 116-44.6 note, 116-209.25 note, 116B-23 note, 120-3.1 note, 120-4.22A note, 120-32.01 note, 120-32.1 note, 120-36.6 note, 120-37 note, 120-70.36 note, 120-70.46 note, 120-70.52 note, 120-70.65 note, 120-70.82 note, 120-70.90 note, 120-70.92 note, 120-70.95 note, 120-70.101 note, 120-70.102 note, 120-76 note, 120-204 note, 121-9 note, 122A-5.13 note, 126-7 note, 128.27 note, 130A-334 note, 130A-335 note, 130A-336 note, 135-5 note, 135-40.1 note, 135-40.3 note, 135-40.6 note, 135-65 note, 136-12 note, 136-16.6 note, 136-18 note, 136-44.7A note, 136-89.56 note, 136-176 note, 143-8 note, 143-12 note, 143-15.2 note, 143-15.3A note, 143-15.3B note, 143-16.3 note, 143-18.1 note, 143-23 note, 143-25 note, 143-27 note, 143-28.1 note, 14-34.6 note, 143-49 note, 143-135.26 note, 143-166.13 note, 143-200 note, 143-214.8

Ch.	Sec.	1996, 2nd Ex. Sess. General Statutes
18	29.5	note, 143-214.9 note, 143-214.10 note, 143-214.11 note, 143-214.12 note, 143-214.13 note, 143-215.10A note, 143-215.10G note, 143-215.74 note, 143-215.114A note, 143-215B note, 143-341 note, 143-660 note, 143-665 note, 143-670 note, 143B-168.10 note, 143B-168.12 note,
18	29.5	143B-168.13 note, 143B-168.14 note, 143B-168.15 note, 143B-282 note, 146-26 note, 147-11 note, 147-54.5 note, 147-64.12 note, 148-29 note, 148-37 note, 150B-2 note, 150B-19 note, 150B-20 note, 150B-21.1 note, 150B-21.2 note, 150B-21.3 note, 158-15.1 note

General Statutes of North Carolina

Sections Added, Amended or Repealed 1995 (Regular Session, 1996) and 1996 First and Second Extra Sessions

This table lists the sections of the General Statutes of North Carolina which were added, amended or repealed during the 1995 (Regular Session, 1996) (chs. 547 to 757) and the 1996 First Extra Session (ch. 1) and Second Extra Session (chs. 1 to 20) legislative sessions of the General Assembly.

In instances where the effective date of an act has been postponed beyond January 1, 1997, the effective date of such act is indicated in the right-hand column.

G.S.		*Session Laws*		*Postponed Effective*
§	*Effect*	*Chapter*	*Section*	*Date*
1-47	Amended	742	1(a)	
1-50	Amended	742	1(a)	
1-52	Amended	742	1(b)	
1-54.1	Amended	746	5	
1-110	Amended	591	4	
1-285	Amended	742	42.3	
1-286	Amended	742	42.4	
1-349	Amended	742	2	
1-538.2	Amended	742	3	
1A-1-30	Amended	742	4	
6-21.3	Amended	742	5	
7A-41	Amended	589	1(a)	1/4/97
7A-41	Amended	589	1(c)	1/4/97
7A-41.2	Added	9	1	
7A-45.1	Amended	18	22.6(a)	
7A-60	Amended	18	22(a)	
7A-60	Amended	589	3(a)	1/4/97
7A-101	Amended	18	28.4	
7A-102	Amended	18	28.5	
7A-133	Amended	18	22.4	
7A-133	Amended	18	22.7(a)	
7A-133	Amended	589	2(a)	
7A-171.1	Amended	18	28.6(a)	
7A-171.1	Amended	18	28.6(b)	
7A-191.1	Added	725	4	
7A-198	Amended	18	22.11	
7A-272	Amended	725	1	
7A-272	Amended	725	2	
7A-289.24	Amended	690	4	
7A-304	Amended	18	22.13(a)	
7A-451	Amended	719	7	
7A-465	Amended	18	28.25	
7A-523	Amended	18	23.2(c)	
7A-524	Amended	18	23.2(d)	
7A-603	Added	18	23.2(a)	
7A-646	Amended	609	1	
7A-647	Amended	609	3	
7A-650	Amended	609	4	

G.S.		*Session Laws*		*Postponed*
				Effective
§	*Effect*	*Chapter*	*Section*	*Date*
7A-652	Amended	609	2	
7A-655	Amended	18	23.2(e)	
14-3	Amended	742	6	
14-32.2	Amended	742	7	
14-32.2	Amended	742	8	
14-32.3	Amended	742	9	
14-32.4	Added	18	20.13(a)	
14-34.5	Amended	742	10	
14-34.7	Added	18	20.14B(a)	
14-41	Amended	745	1	
14-49	Amended	751	1	
14-62	Amended	751	2	
14-62.2	Added	751	3	
14-107	Amended	742	11	
14-202.2	Amended	742	12	
14-202.3	Added	632	1	
14-277	Amended	712	1	
14-315	Amended	18	20.13(b)	
14-409.39	Added	727	1	
14-409.40	Added	727	1	
15-194	Amended	719	5	
15-217.1	Repealed	719	3	
15A-502	Amended	18	23.2(b)	
15A-644.1	Added	725	3	
15A-941	Amended	725	7	
15A-942	Amended	725	8	
15A-952	Amended	725	9	
15A-1002	Amended	742	13	
15A-1002	Amended	742	14	
15A-1011	Amended	725	5	
15A-1029.1	Added	725	6	
15A-1221	Amended	725	10	
15A-1340.14	Amended	742	15	
15A-1340.22	Amended	742	16	
15A-1343	Amended	18	20.14(c)	
15A-1368.2	Amended	18	20.14(a)	
15A-1368.4	Amended	18	20.14(b)	
15A-1368.6	Amended	18	20.15(b)	
15A-1376	Amended	18	20.15(a)	
15A-1415	Amended	719	1	
15A-1419	Amended	719	2	
15A-1420	Amended	719	3	
15A-1420	Amended	719	4	
15A-1441	Amended	719	6	
20-1	Amended	756	1	
20-4	Amended	18	19.3	
20-4.01	Amended	756	2	
20-4.01	Amended	756	3	
20-4.01	Amended	756	4	
20-7	Amended	675	1	
20-14	Amended	675	2	
20-16.1	Amended	652	2	
20-37.16	Amended	695	1	
20-37.16	Amended	756	5	
20-39	Amended	18	23(a)	
20-50.4	Amended	741	1	
20-50.4	Amended	741	2	
20-64.1	Repealed	756	6	
20-77	Amended	635	1	

G.S.		Session Laws		Postponed Effective
§	*Effect*	*Chapter*	*Section*	*Date*
20-79.5	Amended	18	8(a)	
20-79.7	Amended	18	19.11(e)	
20-87	Amended	756	7	
20-88	Amended	756	8	
20-91	Amended	756	9	
20-92	Repealed	756	10	
20-99	Amended	756	11	
20-101	Amended	756	12	
20-113	Repealed	756	13	
20-116	Amended	573	1	
20-116	Amended	756	14	
20-118	Amended	756	29	
20-123	Amended	756	15	
20-130.1	Amended	756	16	
20-134	Amended	715	1	
20-135.1	Repealed	756	30	
20-141	Amended	652	1	
20-179.3	Amended	756	31	
20-183.7	Amended	743	1	
20-215.1	Amended	756	17	
20-279.32	Amended	756	18	
20-317	Amended	756	19	
20-376	Amended	756	20	
20-378	Repealed	756	21	
20-379	Amended	756	22	
20-380	Amended	756	23	
20-381	Amended	756	24	
20-382	Amended	756	25	
20-382.1	Amended	756	26	
20-384	Amended	756	27	
20-385	Amended	756	28	
30-26	Amended	742	17	
42-27	Amended	566	1	
44-49.1	Repealed	674	1	
44-50	Amended	674	3	
44-51.8	Amended	676	1	
44A-2	Amended	744	1	
44A-4	Amended	635	2	
44A-4	Amended	635	3	
44A-4	Amended	635	4	
44A-7	Amended	607	1	
44A-8	Amended	607	2	
44A-18	Amended	607	3	
45-37	Amended	604	1	
45A-1	Added	714	1	
45A-2	Added	714	1	
45A-3	Added	714	1	
45A-4	Added	714	1	
45A-5	Added	714	1	
45A-6	Added	714	1	
45A-7	Added	714	1	
47-41.01	Amended	742	18	
47-46.3	Amended	604	2	
47-46.3	Amended	742	19	
50-13.2	Amended	591	5	
50B-1	Amended	591	1	
50B-3	Amended	591	2	
50B-3	Amended	742	42.1	
50B-4	Amended	591	3	

G.S. *§*	*Effect*	*Session Laws* *Chapter*	*Section*	*Postponed Effective Date*
51-1.2	Added	588	1	
53-77.1A	Amended	556	2	
53-77.2A	Repealed	556	1	
53-141	Amended	742	20	
53-175	Amended	742	21	
53-212.1	Added	557	1	
53-224.21	Amended	742	22	
53-234	Amended	714	2	
53A-46	Repealed	14	8	
54B-110	Amended	556	3	
54C-175	Amended	556	4	
55-14-22	Amended	17	15.1(b)	
55A-14-22	Amended	17	15.1(d)	
57C-6-03	Amended	17	15.1(e)	
58-2-145	Amended	729	1	
58-3-173	Amended	669	2	
58-3-185	Amended	674	1	
58-3-185	Amended	674	2	
58-6-20	Amended	747	11	
58-6-25	Amended	646	19	
58-6-25	Amended	747	3	
58-7-162	Amended	659	1	
58-10-25	Amended	752	2	
58-14-15	Amended	742	23	
58-22-15	Amended	747	8	
58-22-20	Amended	747	9	
58-22-35	Amended	747	10	
58-30-5	Amended	582	1	
58-30-10	Amended	582	2	
58-30-10	Amended	742	24	
58-30-160	Amended	658	1	
58-33-25	Amended	726	14	
58-33-25	Amended	726	20	
58-35-10	Amended	742	25	
58-36-2	Added	730	2	
58-36-30	Amended	668	1	
58-36-75	Amended	730	3	
58-40-10	Amended	730	1	
58-40-30	Amended	668	2	
58-40-90	Amended	742	26	
58-43-20	Repealed	752	1	
58-45-5	Amended	592	2	
58-45-25	Amended	592	1	
58-45-35	Amended	740	1	
58-45-80	Amended	747	12	
58-46-45	Amended	747	13	
58-47-30	Amended	747	14	
58-50-130	Amended	669	1	
58-51-15	Amended	742	27	
58-64-45	Amended	582	3	
58-64-60	Amended	582	4	
58-66-35	Amended	742	28	
58-68A-1	Repealed	17	16.3	
58-68A-5	Repealed	17	16.3	
58-68A-10	Repealed	17	16.3	
58-71-1	Amended	726	1	
58-71-40	Amended	726	2	
58-71-45	Amended	726	3	
58-71-50	Amended	726	4	

G.S. §	*Effect*	*Session Laws*		*Postponed Effective Date*
		Chapter	*Section*	
58-71-55	Amended	726	5	
58-71-60	Repealed	726	6	
58-71-65	Amended	726	7	
58-71-70	Amended	726	8	
58-71-71	Amended	726	9	
58-71-72	Added	726	10	
58-71-75	Amended	726	11	
58-71-81	Amended	726	12	
58-71-82	Added	726	13	
58-71-82	Amended	726	15	
58-71-95	Amended	726	16	
58-71-105	Amended	726	17	
58-71-115	Amended	726	18	
58-71-140	Amended	726	19	
58-84-1	Amended	747	4	
58-84-5	Amended	747	5	
58-84-10	Repealed	747	6	
58-84-15	Repealed	747	6	
58-84-20	Repealed	747	6	
58-84-25	Amended	747	7	
62-2	Amended	742	29	
62-2	Amended	742	30	
62-2	Amended	742	31	
62-2	Amended	742	32	
62-10	Amended	18	28.2(b)	
62-41	Amended	673	2	
62-110	Amended	753	1	
62-200	Amended	742	33	
62-235	Repealed	673	3	
62-236	Repealed	673	5	
63-56	Amended	644	1	
63A-23	Amended	18	26	
66-234	Amended	742	34	
66-250	Added	14	24	
66-251	Added	14	24	
66-252	Added	14	24	
66-253	Added	14	24	
66-254	Added	14	24	
66-255	Added	14	24	
66-256	Added	14	24	
66-257	Added	14	24	
66-258	Added	14	24	
75-2.1	Added	550	1	
75-5	Repealed	550	2	
75-6	Repealed	550	2	
75-7	Repealed	550	2	
75A-13.2	Amended	742	42	
86A-3	Amended	605	1	
86A-4	Amended	605	2	
86A-6	Amended	605	3	
86A-11	Amended	605	4	
86A-13	Amended	605	5	
86A-14	Amended	605	6	
86A-15	Amended	605	7	
86A-16	Amended	605	8	
86A-17	Amended	605	9	
86A-22	Amended	605	10	
86A-22	Amended	605	11	
86A-23	Amended	605	12	

G.S. *§*	*Effect*	*Session Laws* *Chapter*	*Session Laws* *Section*	*Postponed Effective Date*
86A-24	Amended	605	13	
86A-25	Amended	605	14	
87-94	Amended	743	2	
88-1	Amended	605	15	
88-23	Amended	605	16	
89C-3	Amended	18	7.10(i)	
89C-14	Amended	18	7.10(k)	
89C-25	Amended	742	35	
89E-3	Amended	18	7.10(j)	
90-12	Amended	634	2	
90-15.1	Amended	634	1(a)	1/1/98
90-26	Amended	584	5	
90-30.1	Amended	584	2	
90-31	Amended	584	3	
90-35	Amended	584	4	
90-39	Amended	584	1	
90-95	Amended	18	20.13(c)	
90-210.67	Amended	665	1	
90-280	Amended	645	1	
90-411	Amended	742	36	
90-500	Added	720	1	
90-501	Added	720	1	
90-502	Added	720	1	
90-503	Added	720	1	
90-504	Added	720	1	
90-505	Added	720	1	
90-506	Added	720	1	
90-507	Added	720	1	
90-508	Added	720	1	
90-509	Added	720	1	
90-510	Added	720	1	
90-511	Added	720	1	
90A-35	Amended	626	6(a)	
90A-47	Added	626	6(b)	
90A-47.1	Added	626	6(b)	
90A-47.2	Added	626	6(b)	
90A-47.3	Amended	18	27.34(c)	
90A-47.3	Added	626	6(b)	
90A-47.4	Added	626	6(b)	
90A-47.5	Added	626	6(b)	
90A-47.6	Added	626	6(b)	
90B-10	Amended	18	24.11	
91A-8	Amended	742	37	
93B-12	Amended	17	16.4	
93E-1-5	Amended	15	16	
95-229.5	Added	587	1	
95-229.6	Added	587	1	
95-229.7	Added	587	1	
95-229.8	Added	587	1	
95-229.9	Added	587	1	
95-229.10	Added	587	1	
95-229.11	Added	587	1	
95-229.12	Added	587	1	
95-229.13	Added	587	1	
96-3	Amended	18	28.2(c)	
96-5	Amended	18	26.6	
96-5	Amended	608	2	

G.S.		Session Laws		Postponed Effective
§	*Effect*	*Chapter*	*Section*	*Date*
96-9*	Amended	1	1-4	
96-12	Amended	646	25(a)	
97-19	Amended	555	1	
97-26	Amended	548	1	
97-86	Amended	552	1	
105-2	Amended	13	6.4	
105-3	Amended	13	6.2	
105-4	Amended	13	6.1	
105-9	Amended	13	6.5	
105-23.1	Added	13	6.6	
105-33	Amended	14	18	7/1/97
105-33	Amended	14	19	7/1/97
105-36	Repealed	14	17	7/1/97
105-36.1	Repealed	14	17	7/1/97
105-37	Repealed	14	17	7/1/97
105-38	Amended	14	20	7/1/97
105-42	Repealed	14	17	7/1/97
105-45	Repealed	14	17	7/1/97
105-46	Repealed	14	17	7/1/97
105-50	Repealed	14	17	7/1/97
105-51.1	Repealed	14	17	7/1/97
105-53	Repealed	14	17	7/1/97
105-53	Amended	646	1	
105-54	Repealed	14	17	7/1/97
105-55	Repealed	14	17	7/1/97
105-58	Repealed	14	17	7/1/97
105-60	Repealed	14	17	7/1/97
105-61	Repealed	14	17	7/1/97
105-62	Repealed	14	17	7/1/97
105-65	Repealed	14	17	7/1/97
105-65.1	Repealed	14	17	7/1/97
105-66.1	Repealed	14	17	7/1/97
105-70	Repealed	14	17	7/1/97
105-72	Repealed	14	17	7/1/97
105-74	Repealed	14	17	7/1/97
105-75.1	Repealed	14	17	7/1/97
105-77	Repealed	14	17	7/1/97
105-80	Repealed	14	17	7/1/97
105-85	Repealed	14	17	7/1/97
105-86	Repealed	14	17	7/1/97
105-89	Repealed	14	17	7/1/97
105-89.1	Repealed	14	17	7/1/97
105-90	Repealed	14	17	7/1/97
105-91	Repealed	14	17	7/1/97
105-97	Repealed	14	17	7/1/97
105-98	Repealed	14	17	7/1/97
105-99	Repealed	14	17	7/1/97
105-102.1	Repealed	14	17	7/1/97
105-102.5	Repealed	14	17	7/1/97
105-109.1	Amended	14	21	7/1/97
105-113.45	Amended	13	4.1	7/1/99
105-113.45	Amended	13	4.2	
105-113.45	Amended	646	2	
105-113.46	Amended	18	15.4(a)	
105-113.47	Repealed	13	4.2	1/7/99
105-113.47	Amended	18	15.4(b)	

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*c. 1 1996, 1st Ex. Sess.

G.S.		Session Laws		Postponed Effective
§	Effect	Chapter	Section	Date
105-113.50	Repealed	13	4.2	1/7/99
105-113.50A	Repealed	13	4.2	1/7/99
105-113.51	Repealed	13	4.2	1/7/99
105-113.52	Repealed	13	4.2	1/7/99
105-113.53	Repealed	13	4.2	1/7/99
105-113.57	Repealed	13	4.2	1/7/99
105-113.58	Repealed	13	4.2	1/7/99
105-113.63	Repealed	13	4.2	1/7/99
105-113.64	Repealed	13	4.2	1/7/99
105-113.81A	Amended	18	25.2(a)	
105-113.81A	Amended	18	25.2(b)	
105-113.82	Amended	18	25.2(a)	
105-117	Repealed	646	3	
105-118	Repealed	646	3	
105-122	Amended	560	1	
105-129.2	Added	13	3.3	
105-129.3	Added	13	3.3	
105-129.4	Added	13	3.3	
105-129.5	Added	13	3.3	
105-129.6	Added	13	3.3	
105-129.7	Added	13	3.3	
105-129.8	Amended	13	3.2	
105-129.8	Amended	13	3.3	
105-129.8	Amended	13	3.4	
105-129.9	Added	13	3.3	
105-129.10	Added	13	3.3	
105-129.11	Added	13	3.3	
105-129.15	Added	13	3.12	
105-129.16	Added	13	3.12	
105-129.17	Added	13	3.12	
105-129.18	Added	13	3.12	
105-129.19	Added	13	3.12	
105-130.3	Amended	13	2.1	
105-130.4	Amended	14	5	
105-130.5	Amended	14	4	
105-130.5	Amended	14	10	
105-130.7	Amended	14	3	
105-130.38	Repealed	14	1	
105-130.40	Repealed	13	3.2	
105-130.41	Amended	18	15.3(a)	
105-134.1	Amended	13	8.2	
105-134.6	Amended	13	8.1	
105-134.6	Amended	14	9	
105-151.15	Repealed	14	1	
105-151.17	Repealed	13	3.4	
105-151.19	Repealed	14	2	
105-151.20	Amended	19	1	
105-151.20	Repealed	19	2	1/1/03
105-151.22	Amended	18	15.3(b)	
105-151.26	Added	13	7.1	
105-163.010	Amended	14	7	
105-163.011	Amended	14	7	
105-163.012	Amended	14	6	
105-163.012	Amended	14	7	
105-163.013	Amended	14	7	
105-163.014	Amended	14	7	
105-164.3	Amended	14	13	
105-164.3	Amended	14	14	
105-164.3	Amended	649	2	
105-164.4	Amended	13	1.1	

G.S. §	*Effect*	*Session Laws Chapter*	*Section*	*Postponed Effective Date*
105-164.4	Amended	13	9.1	
105-164.4	Amended	13	9.2	
105-164.6A	Added	14	11	
105-164.12B	Added	13	5.1	
105-164.13	Amended	14	15	
105-164.13	Amended	14	16	
105-164.13	Amended	646	4	
105-164.13	Amended	646	5	
105-164.13	Amended	649	1	
105-164.14	Amended	18	15.7(a)	
105-164.14	Amended	646	6	
105-188	Amended	13	6.3	
105-191	Repealed	646	7	
105-196	Repealed	646	7	
105-197	Amended	646	8	
105-228.5	Amended	747	2	
105-228.9	Amended	747	1	
105-228.90	Amended	664	1	
105-229	Repealed	646	9	
105-236	Amended	646	10	
105-236	Amended	647	51	
105-236	Amended	696	1	
105-241.1	Amended	13	3.7	
105-241.1	Amended	646	11	
105-253	Amended	647	52	
105-267	Amended	14	10.1	
105-275	Amended	646	12	
105-275.1	Amended	646	13	
105-277.1	Amended	18	15.1(a)	7/1/97
105-277.1A	Amended	18	15.1(c)	7/1/97
105-277.2	Amended	646	17	
105-277A	Amended	646	14	
105-278.7	Amended	646	15	
105-282.1	Amended	646	16	
105-309	Amended	18	15.1(b)	7/1/97
105-330.2	Amended	646	24	
105-333	Amended	646	18	
105-449.57	Amended	647	50	
105-449.60	Amended	647	1	
105-449.60	Amended	647	2	
105-449.65	Amended	647	3	
105-449.66	Amended	647	4	
105-449.67	Amended	647	5	
105-449.69	Amended	647	6	
105-449.70	Amended	647	7	
105-449.70	Amended	647	8	
105-449.71	Amended	647	9	
105-449.72	Amended	647	10	
105-449.73	Amended	647	11	
105-449.77	Amended	647	12	
105-449.81	Amended	647	13	
105-449.82	Amended	647	14	
105-449.83A	Added	647	15	
105-449.84	Amended	647	16	
105-449.84A	Added	647	17	
105-449.85	Amended	647	18	
105-449.87	Amended	647	19	
105-449.88	Amended	647	20	
105-449.88	Amended	647	21	7/1/97
105-449.89	Added	647	22	

G.S.		*Session Laws*		*Postponed Effective*
§	*Effect*	*Chapter*	*Section*	*Date*
105-449.90	Amended	647	23	
105-449.90A	Added	647	24	
105-449.91	Amended	647	25	
105-449.92	Amended	647	26	
105-449.93	Amended	647	27	
105-449.94	Amended	647	28	
105-449.95	Amended	647	29	
105-449.96	Amended	647	30	
105-449.97	Amended	647	31	
105-449.97	Amended	647	32	7/1/97
105-449.98	Amended	647	33	
105-449.100	Amended	647	34	
105-449.101	Amended	647	35	
105-449.102	Amended	647	36	
105-449.104	Added	647	37	
105-449.105	Amended	647	38	
105-449.115	Amended	647	39	
105-449.115	Amended	647	40	
105-449.118A	Added	647	41	
105-449.120	Amended	647	42	
105-449.121	Amended	647	43	
105-449.130	Amended	647	44	
105-449.131	Amended	647	45	
105-449.134	Amended	647	46	
105-449.136	Amended	647	47	
105-449.138	Amended	647	48	
105-449.139	Amended	647	49	
105-465	Amended	13	1.2	
105-467	Amended	13	1.3	
105-468	Amended	13	1.4	
105-469	Amended	14	12	
105-503	Repealed	666	4	
105A-2	Amended	18	24.30(d)	
106-800	Amended	626	7(a)	
106-801	Amended	626	7(a)	
106-802	Amended	626	7(a)	
106-802	Amended	743	3	
106-803	Amended	626	7(a)	
106-804	Added	626	7(a)	
106-805	Amended	18	27.34(d)	
106-805	Added	626	7(a)	
108A-1	Amended	690	5	
108A-2	Amended	690	6	
108A-3	Amended	690	7	
108A-7	Amended	690	8	
108A-15.1	Added	690	9	
108A-53	Amended	18	24.31(a)	
108A-57	Amended	18	24.2(a)	
113-44.3	Repealed	653	4	
113-44.4	Repealed	653	4	
113-44.5	Repealed	653	4	
113-44.6	Repealed	653	4	
113-44.15	Amended	646	20	
113-129	Amended	586	1	
113-145.1	Added	18	27.6(a)	
113-145.2	Added	18	27.6(a)	
113-145.3	Added	18	27.6(a)	
113-145.4	Added	18	27.6(a)	
113-145.5	Added	18	27.6(a)	

G.S. *§*	*Effect*	*Session Laws* *Chapter*	*Section*	*Postponed Effective Date*
113-145.6	Added	18	27.6(a), (c)	
113-145.7	Added	18	27.6(a)	
113-145.8	Added	18	27.6(a)	
113-152	Amended	586	1	
113-153	Amended	586	1	
113-154	Amended	633	1(a)	
113-154.1	Amended	586	1	
113-156	Amended	586	1	
113-161	Amended	586	1	
113-190	Added	633	2	
114-19.1	Amended	606	4	
114-19.3	Amended	606	1	
115C-12	Amended	18	18.4	
115C-12	Amended	18	18.28(a)	
115C-12	Amended	716	1	
115C-15	Amended	716	29(b)	
115C-17	Added	716	28	
115C-39	Amended	716	5	
115C-47	Amended	716	11	
115C-47	Amended	716	12	
115C-47	Amended	716	17	
115C-64.1	Repealed	716	4	
115C-64.2	Repealed	716	4	
115C-64.3	Repealed	716	4	
115C-64.4	Repealed	716	4	
115C-64.5	Repealed	716	4	
115C-81	Amended	18	18.17(a)	
115C-81	Amended	18	18.24(a)	
115C-81	Amended	716	8.6	
115C-81.2	Added	716	8.1	
115C-81.2	Added	716	8.2	
115C-81.2	Added	716	8.3	
115C-81.2	Added	716	8.4	
115C-81.2	Added	716	8.5(a)	
115C-84	Amended	716	9	
115C-84.1	Added	662	1	
115C-84.1	Added	723	3	
115C-84.1	Added	724	3	
115C-85	Amended	716	18	
115C-98	Amended	716	8.7	
115C-98	Amended	716	19	
115C-105.3	Amended	716	22	
115C-105.20	Amended	716	2	
115C-105.20	Amended	716	3	
115C-105.21	Amended	716	2	
115C-105.21	Amended	716	3	
115C-105.25	Amended	18	18.24(h)	
115C-105.25	Amended	18	18.24(i)	7/1/97
115C-105.25	Amended	18	18.24(j)	
115C-105.25	Amended	18	18.24(k)	7/1/97
115C-105.25	Added	716	3	
115C-105.26	Added	716	3	
115C-105.27	Amended	716	2	
115C-105.27	Amended	716	3	
115C-105.28	Amended	716	2	
115C-105.28	Repealed	716	3	
115C-105.29	Amended	716	2	
115C-105.29	Repealed	716	3	
115C-105.30	Amended	716	2	

G.S. §	Effect	Session Laws Chapter	Session Laws Section	Postponed Effective Date
115C-105.30	Amended	716	3	
115C-105.31	Amended	716	2	
115C-105.31	Amended	716	3	
115C-105.32	Amended	716	2	
115C-105.32	Amended	716	3	
115C-105.35	Added	716	3	
115C-105.36	Added	716	3	
115C-105.37	Added	716	3	
115C-105.38	Added	716	3	
115C-105.39	Added	716	3	
115C-109	Amended	18	18.24(b)	
115C-110	Amended	18	18.24(c)	
115C-110	Amended	18	18.24(d)	
115C-112	Repealed	716	20	
115C-113	Amended	18	18.24(e)	
115C-150.5	Added	18	18.24(f)	
115C-150.6	Added	18	18.24(f)	
115C-150.7	Added	18	18.24(f)	
115C-150.8	Added	18	18.24(f)	
115C-174.11	Amended	18	18.14	
115C-238.1	Repealed	716	2	
115C-238.2	Repealed	716	2	
115C-238.3	Repealed	716	2	
115C-238.4	Repealed	716	2	
115C-238.6	Repealed	716	2	
115C-238.6A	Repealed	716	2	
115C-238.7	Repealed	716	2	
115C-238.8	Repealed	716	2	
115C-238.23	Amended	716	23	
115C-238.29A	Added	731	2	
115C-238.29B	Added	731	2	
115C-238.29C	Added	731	2	
115C-238.29D	Added	731	2	
115C-238.29E	Added	731	2	
115C-238.29F	Added	731	2	
115C-238.29G	Added	731	2	
115C-238.29H	Added	731	2	
115C-238.29I	Added	731	2	
115C-238.29J	Added	731	2	
115C-238.31	Amended	716	24	
115C-274	Amended	716	6	
115C-276	Amended	716	25	
115C-288	Amended	18	18.27	
115C-288	Amended	716	7.1	
115C-290.5	Amended	18	18.21(a)	
115C-290.7	Amended	18	18.21(b)	1/1/98
115C-290.8	Amended	18	18.21(c)	1/1/98
115C-295.1	Amended	18	18.12(a)	
115C-295.2	Added	18	18.12(b)	
115C-295.3	Added	18	18.12(b)	
115C-296	Amended	716	7	
115C-302	Amended	18	18.13A	
115C-302	Amended	716	10	
115C-302	Amended	716	26	
115C-325	Amended	716	8	
115C-326	Amended	716	16	
115C-391	Amended	716	21	
115C-426.2	Added	666	2	
115C-431	Amended	666	3	

G.S.		*Session Laws*		*Postponed*
§	*Effect*	*Chapter*	*Section*	*Effective Date*
115C-440.1	Amended	666	4	
115C-440.1	Amended	666	5	
115C-468	Amended	18	18.10	
115C-489.2	Amended	631	12	
115C-489.3	Amended	18	18.17(b)	
115C-489.3	Repealed	631	13	
115C-489.4	Repealed	631	13	
115C-521	Amended	18	18.17(c)	
115C-521	Amended	18	18.17(d)	
115C-522	Amended	716	13	
115C-522.1	Added	716	15.1	
115C-528	Added	716	14	
115C-529	Added	716	15	
115C-546.1	Amended	13	2.2	10/1/97
115C-546.1	Amended	631	15	
115D-5	Amended	18	17.4	
115D-5	Amended	18	17.7(a)	
115D-39	Amended	18	17.1(a)	
116-2	Amended	603	1	
116-4	Amended	603	2	
116-5	Amended	603	3	
116-12	Amended	603	4	
116-30.1	Amended	18	7.4(k)	
116-30.2	Amended	18	7.4(i)	
116-44.6	Added	18	16.5(a)	
116-44.7	Added	18	16.5(a)	
116-44.8	Added	18	16.5(a)	
116-209.25	Added	18	16.7	
116B-23	Added	18	7A(a)	
119-15	Amended	647	53	
119-16.2	Amended	647	54	
119-18	Amended	647	55	
119-40	Repealed	647	56	
119-41	Repealed	647	56	
119-44	Repealed	647	56	
120-3.1	Amended	18	8(b)	
120-4.22A	Amended	18	28.21(c)	
120-32.1	Amended	18	8(c)	
120-32.1	Amended	18	8.1	
120-32.01	Amended	18	8.2	
120-36.6	Amended	18	8(d)	
120-37	Amended	18	28.7	
120-37	Amended	18	28.8	
120-70.36	Amended	18	8(e)	
120-70.46	Amended	18	8(f)	
120-70.52	Amended	18	8(g)	
120-70.65	Amended	18	8(h)	
120-70.82	Amended	18	8(i)	
120-70.90	Repealed	18	24.29(g)	
120-70.91	Repealed	18	24.29(g)	
120-70.92	Amended	18	8(j)	
120-70.92	Repealed	18	24.29(g)	
120-70.95	Amended	18	8(k)	
120-70.101	Amended	18	7.10(h)	
120-70.102	Amended	18	8(l)	
120-76	Amended	18	7.4(a)	
120-186.1	Amended	583	1	
120-204	Added	18	24.8(a)	
120-205	Added	18	24.8(a)	

G.S. §	Effect	Session Laws Chapter	Session Laws Section	Postponed Effective Date
120-206	Added	18	24.8(a)	
120-207	Added	18	24.8(a)	
121-9	Amended	18	7.7(a)	
122A-5.13	Added	18	24.26B(a)	
122C-115	Amended	749	1	
122C-116	Amended	690	10	
122C-117	Amended	749	2	
122C-118	Amended	749	3	
122C-119	Amended	749	4	
122C-119.1	Amended	749	5	
122C-123	Amended	690	11	
122C-124	Amended	749	6	
122C-125	Amended	749	7	
122C-125.1	Added	749	8	
122C-126	Amended	749	9	
122C-127	Added	690	12	
122C-132	Amended	739	1	
122C-201	Amended	739	2	
122C-210.1	Amended	739	3	
122C-251	Amended	739	4	
122C-261	Amended	739	5	
122C-261	Amended	739	6	
122C-262	Amended	739	7	
122C-263	Amended	739	8(a)	
122C-263	Amended	739	8(b)	
122C-263	Amended	739	8(d)	
122C-263	Amended	739	8(c)	
122C-264	Amended	739	9	
122C-266	Amended	739	10(a)	
122C-266	Amended	739	10(b)	
122C-268	Amended	739	11(a)	
122C-268	Amended	739	11(b)	
122C-270	Amended	739	12(a)	
122C-271	Amended	739	13	
122C-403	Amended	667	3	
122C-404	Repealed	667	4	
122C-405	Amended	667	5	
122C-411.1	Repealed	18	21.4	
122C-411.1	Added	667	6	
122C-412	Added	667	2	
122C-412.1	Added	667	2	
122C-412.2	Added	667	2	
126-5	Amended	690	15	
128-27	Amended	18	28.21(d)	
130A-34	Amended	690	13	
130A-43	Added	690	14	
130A-290	Amended	594	1	
130A-290	Amended	594	2	
130A-290	Amended	594	3	
130A-290	Amended	594	4	
130A-290	Amended	594	5	
130A-291	Amended	743	4	
130A-294	Amended	594	6	
130A-294	Amended	594	7	
130A-309.04	Amended	594	8	
130A-309.05	Amended	594	9	
130A-309.06	Amended	594	10	
130A-309.07	Amended	594	11	
130A-309.08	Amended	594	12	

G.S. *§*	*Effect*	*Session Laws* *Chapter*	*Section*	*Postponed Effective Date*
130A-309.09A	Amended	594	13	
130A-309.09B	Amended	594	14	
130A-309.09C	Amended	594	15	
130A-309.09D	Amended	594	16	
130A-309.10	Amended	594	17	
130A-309.11	Amended	594	18	
130A-309.25	Amended	594	19	
130A-309.26	Amended	594	20	
130A-309.53	Amended	594	21	
130A-309.58	Amended	594	22	
130A-309.63	Amended	594	23	
130A-309.83	Amended	594	24	
130A-309.85	Amended	594	25	
130A-309.85	Amended	594	26	
130A-334	Amended	18	27.31(a)	
130A-334	Amended	18	27.31(b)	
130A-334	Amended	585	1	
130A-335	Amended	18	27.31(c)	
130A-335	Amended	585	2	
130A-336	Amended	18	27.31(d)	
130A-336	Amended	18	27.31(e)	
130A-336	Amended	18	27.31(f)	
130A-336	Amended	585	3	
130B-5	Amended	743	5	
130B-7	Amended	743	6	
130B-16	Amended	743	7	
130B-22	Amended	743	8	
131D-34	Amended	602	1	
131D-40	Added	606	2	
131E-7.1	Added	713	1	
131E-99	Added	713	2	
131E-111	Repealed	713	3(a)	
131E-129	Amended	602	2	
131E-255	Added	606	3	1/1/98
131E-255	Amended	713	3(a)	
131E-255	Added	713	3(b)	
131E-255	Amended	713	3(b)	
131E-256	Added	713	3(b)	
131F-3	Amended	650	1	
131F-6	Amended	748	1.3	
131F-9	Amended	748	1.1	
131F-17	Amended	748	1.2	
132-1.1	Amended	646	21	
135-5	Amended	18	28.21(a)	
135-40.1	Amended	18	28.23(a)	
135-40.1	Amended	731	3	
135-40.3	Amended	18	28.23(b)	
135-40.6	Amended	18	28.24	
135-65	Amended	18	28.21(b)	
136-12	Amended	18	19.4(c)	
136-16.6	Amended	18	19.12	
136-18	Amended	18	19.10(a)	
136-18	Amended	673	4	
136-20.1	Amended	673	5	
136-28.8	Amended	743	9	
136-44.7A	Added	18	19.7	
136-89.56	Amended	18	19.10(b)	
136-176	Amended	18	19.4(a)	
136-176	Amended	590	6	

G.S.		*Session Laws*		*Postponed Effective*
§	*Effect*	*Chapter*	*Section*	*Date*
136-177.1	Added	590	15	
136-180.1	Added	590	14	
136-185	Added	590	16	
143-6.1	Amended	748	2.1	
143-8	Amended	18	8(m)	
143-12	Amended	18	7.4(c)	
143-15.2	Amended	18	7.1(a)	
143-15.3A	Amended	18	7.1(b)	
143-15.3A	Amended	18	7.4(b)	
143-15.3A	Amended	18	7.4(d)	
143-15.3B	Added	18	27.6(b)	
143-16.3	Amended	18	7.4(j)	
143-18.1	Amended	18	7.4(e)	
143-23	Amended	18	7.4(f)	
143-25	Amended	18	7.4(g)	
143-27	Amended	18	7.4(h)(1)	7/1/97
143-27	Amended	18	7.4(h)(2)	7/1/97
143-28.1	Amended	18	19.4(b)	
143-49	Amended	18	24.17	
143-57.1	Amended	716	30	
143-58.2	Amended	743	10	
143-58.2	Amended	743	11	
143-135.26	Amended	18	10.1	
143-166.13	Amended	18	20.7(a)	
143-200	Amended	18	11.1(a)	
143-214.2A	Amended	743	12	
143-214.8	Added	18	27.4(a)	
143-214.9	Added	18	27.4(a)	
143-214.10	Added	18	27.4(a)	
143-214.11	Added	18	27.4(a)	
143-214.12	Added	18	27.4(a)	
143-214.13	Added	18	27.4(a)	
143-215	Amended	626	4	
143-215.1	Amended	626	2	
143-215.2	Amended	626	3	
143-215.3A	Amended	743	13	
143-215.6A	Amended	743	14	
143-215.10A	Amended	18	27.34(a)	
143-215.10A	Added	626	1	
143-215.10B	Amended	18	27.34(b)	
143-215.10B	Added	626	1	
143-215.10C	Added	626	1	
143-215.10D	Added	626	1	
143-215.10E	Added	626	1	
143-215.10F	Added	626	1	
143-215.10G	Added	626	1	
143-215.17	Amended	743	15	
143-215.22J	Added	633	3(a)	
143-215.22K	Added	633	3(a)	
143-215.74	Amended	18	27.22(a)	
143-215.74	Amended	18	27.22(b)	
143-215.74	Amended	626	9	
143-215.74	Amended	626	10	
143-215.74C	Repealed	626	13	
143-215.74D	Repealed	626	13	
143-215.74E	Repealed	626	13	
143-215.94C	Amended	648	2	
143-215.94E	Amended	648	3	
143-215.94E	Amended	648	4	

G.S. §	Effect	Session Laws Chapter	Session Laws Section	Postponed Effective Date
143-215.94O	Amended	743	16	
143-215.94W	Amended	743	17	
143-215.108	Amended	728	1	
143-215.114	Amended	743	18	
143-215.114A	Amended	18	27.34(f)	
143-341	Amended	18	10.2	
143-439	Amended	743	19	
143-573	Amended	17	3.2	
143-574	Amended	17	3.2	
143-577	Amended	17	3.1	
143-577	Amended	17	3.2	
143-610	Repealed	17	16.2	
143-610	Amended	17	16.2	
143-611	Repealed	17	16.2	
143-612A	Repealed	17	16.2	
143-614	Repealed	17	16.2	
143-660	Added	18	23.3(a)	
143-661	Added	18	23.3(a)	
143-662	Added	18	23.3(a)	
143-663	Added	18	23.3(a)	
143-664	Added	18	23.3(a)	
143-665	Added	18	27.24(a)	
143-670	Added	18	27.24(a)	
143-671	Added	18	27.24(a)	
143-672	Added	18	27.24(a)	
143-673	Added	18	27.24(a)	
143B-139.7	Added	690	1	
143B-168.12	Amended	18	24.29(b)	
143B-168.13	Amended	18	24.29(c)	
143B-168.14	Amended	18	24.29(d)(1)	
143B-168.15	Amended	18	24.29(e)	
143B-181.5	Amended	583	2	
143B-181.6	Amended	583	2	
143B-181.7	Repealed	583	2	
143B-181.8	Repealed	583	2	
143B-181.9	Repealed	583	2	
143B-279.3	Amended	743	20	
143B-279.6	Added	690	2	
143B-279.7	Added	633	4	
143B-282	Amended	18	27.4(b)	
143B-282.1	Amended	743	21	
143B-301	Amended	626	5	
143B-308	Amended	653	1	
143B-309	Amended	653	2	
143B-310	Amended	653	3	
143B-313.2	Amended	15	16.1	
143B-426.21	Amended	18	23.3(b)	
143B-431	Amended	575	1	
143B-437A	Amended	13	3.5	
143B-437A	Amended	18	26.5	
143B-437D	Added	13	3.6	
143B-437D	Added	13	3.10	
146-26	Amended	18	7.7(b)	
147-11	Amended	18	28(a)	
147-45	Amended	603	5	
147-45	Amended	743	22	
147-54.5	Added	18	13	
147-64.12	Amended	18	8(n)	
148-29	Amended	18	20.2(a)	

G.S.		*Session Laws*		*Postponed*
§	*Effect*	*Chapter*	*Section*	*Effective Date*
148-37	Amended	18	20.18	
150B-2	Amended	18	7.10(g)	
150B-19	Amended	18	7.10(a)	
150B-20	Amended	18	7.10(b)	
150B-21.1	Amended	18	7.10(c)	
150B-21.1	Amended	18	7.10(d)	
150B-21.2	Amended	18	7.10(e)	
150B-21.3	Amended	18	7.10(f)	
150B-21.3	Amended	742	43	
153A-15	Amended	681	1	
153A-27.1	Amended	683	1	
153A-77	Amended	690	3	
153A-152	Amended	14	22	7/1/97
153A-158.1	Amended	11	1	
153A-158.1	Amended	651	1	
153A-158.1	Amended	702	1	
153A-158.1	Amended	703	1	
153A-158.1	Amended	705	1	
153A-158.1	Amended	737	1	
153A-292	Amended	594	27	
153A-348	Amended	746	6	
153A-376	Amended	13	3.8	
153A-376	Amended	575	2	
153A-405	Amended	742	38	
158-15.1	Amended	18	24.22(a)	
159-81	Amended	644	3	
159C-3	Amended	575	4	
159C-3	Amended	575	5	
159C-7	Amended	575	6	
159C-8	Amended	575	7	
159C-11	Amended	575	8	
159G-3	Amended	644	4	
159G-3	Amended	743	23	
159I-3	Amended	743	24	
159I-30	Amended	742	39	
159I-30	Amended	743	26	
160A-20	Amended	644	2	
160A-38	Amended	746	4	
160A-50	Amended	746	3	
160A-211	Amended	14	23	7/1/97
160A-314	Amended	594	28	
160A-360	Amended	746	1	
160A-362	Amended	746	2	
160A-364.1	Amended	746	7	
160A-456	Amended	13	3.9	
160A-456	Amended	575	3	
160B-3	Amended	646	22(a)	
160B-3	Amended	646	22(b)	
160B-4	Amended	646	22(a)	
160B-20	Amended	742	40	
160B-21	Amended	742	41	
163-1	Amended	9	2	
163-9	Amended	9	21	
163-22.1	Amended	694	2	
163-33	Amended	694	1	
163-41	Amended	734	1	
163-42	Amended	554	1	
163-42	Amended	734	2	
163-43	Amended	734	3	

G.S. §	Effect	Session Laws		Postponed Effective Date
		Chapter	Section	
163-45	Amended	688	1	
163-45	Amended	734	4.1	
163-82.10	Amended	688	2	
163-82.20	Amended	608	1	
163-87	Amended	734	4	
163-106	Amended	9	8	
163-107	Amended	9	9	
163-107.1	Amended	9	12	
163-111	Amended	9	10	
163-114	Amended	9	13	
163-122	Amended	9	14	
163-135	Amended	9	15	
163-137	Amended	9	16	
163-138	Amended	9	17	
163-140	Amended	9	3	
163-140	Amended	9	4	
163-140	Amended	9	5	
163-140	Amended	9	11	
163-140	Amended	9	18	
163-140	Amended	9	19	
163-156	Amended	9	19.1	
163-156	Amended	9	22	
163-175	Amended	553	1	
163-191	Amended	9	20	
163-192	Amended	9	6	
163-226	Amended	561	1	
163-226	Amended	734	5	
163-227	Amended	561	2	
163-227	Amended	561	3	
163-227.2	Amended	561	4	
163-229	Amended	561	5	
163-278.7A	Added	593	1	
163-291	Amended	553	2	
163-293	Amended	553	3	
163-294	Amended	553	4	
163-321	Added	9	7	
163-322	Added	9	7	
163-323	Added	9	7	
163-324	Added	9	7	
163-325	Added	9	7	
163-326	Added	9	7	
163-327	Added	9	7	
163-328	Added	9	7	
163-329	Added	9	7	
163-330	Added	9	7	
163-331	Added	9	7	
163-332	Added	9	7	
163-333	Added	9	7	
163-334	Added	9	7	
163-335	Added	9	7	
164-46	Added	18	22.3	

1585